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Nos. 82-818, 82-852

In the Supreme Court of the United States

OCTOBER TERM, 1982

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

BILDISCO AND BILDISCO, DEBTOR-IN-POSSESSION, ET AL.

AND

LOCAL 408, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JOINT APPENDIX

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PETITIONS FOR CERTIORARI FILED NOVEMBER 15, 1982
CERTIORARI GRANTED JANUARY 17, 1983

In the Supreme Court of the United States

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NATIONAL LABOR RELATIONS BOARD, PETITIONER

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(National Labor Relations Board)

Bildisco and Bildisco, Debtor-In-Possession
Board Case No. 22-CA-10061

DATE	PROCEEDINGS
6.3.80	Charge
7.16.80	First Amended Charge
7.31.80	Complaint and Notice of Hearing
8.28.80	Second Amended Charge
10.8.80	First Amended Complaint and Notice of Hearing
1.27.81	Motion to the National Labor Relations Board for Summary Judgment
2.2.81	Order Postponing Hearing Indefinitely
2.2.81	Letter from Counsel for Bildisco requesting that both the Motion for Summary Judgment and the hearing on the complaint be adjourned for a period of 60 days
2.5.81	Letter from Counsel for the General Counsel in opposition to Bildisco's request for a 60-day adjournment of Motion for Summary Judgment
2.9.81	Order Transferring Proceeding to the Board and Notice to Show Cause
2.20.81	Bildisco's Response to Notice to Show Cause
2.25.81	General Counsel's Response to Bildisco's Response to Notice to Show Cause
4.23.81	Board's Decision and Order
5.28.81	Board's letter to Counsel for Bildisco returning Notice of Motion for Reconsideration and Memo in Support as untimely submitted

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES
(D. N. J.)

In Re: Bildisco, A General Partnership
of the State of New Jersey
Docket No. 80-02 783

DATE	PROCEEDINGS
4.14.80	Bankruptcy Petition Filed
1.5.81	Motion to Bankruptcy Court to Reject Collective Bargaining Agreement
1.15.81	Bankruptcy Court Order granting motion to reject collective bargaining agreement
5.6.81	Order of District Court affirming January 15, 1981 order of Bankruptcy Court
	* * * *
6.17.82	Decision of Court of Appeals reversing and remanding April 23, 1981 order of National Labor Relations Board and May 6, 1981 order of District Court
1.17.83	Order of Supreme Court granting petitions for certiorari

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
TWENTY-SECOND REGION

Case No. 22-CA-10061

BILDISCO AND BILDISCO, DEBTOR-IN-POSSESSION

AND

LOCAL 408, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

COMPLAINT AND NOTICE OF HEARING

It having been charged by Local 408, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, of 907 Morris Avenue, Union, New Jersey 07083, herein called the Union, that Bildisco and Bildisco, Debtor-in-Possession, of P.O. Box B, Rahway, New Jersey, have engaged in and are now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, 29 U.S.C. Sec. 151 *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board, herein called the Board, by the undersigned Acting Regional Director for the Twenty-second Region, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, 29 C.F.R. Sec.102, *et seq.*, hereby issues this Complaint and Notice of Hearing, and alleges as follows:

1. (a) The Charge in this proceeding was filed on June 3, 1980.

(b) A copy of the Charge in this proceeding was served by registered mail upon Bildisco on June 4, 1980 and on Bildisco, Debtor-in-Possession on July 21, 1980.

(c) The First Amended Charge in this proceeding was filed on July 16, 1980.

(d) A copy of the First Amended Charge in this proceeding was served by certified mail upon Bildisco on July 16, 1980.

(e) A copy of the First Amended Charge in this proceeding was served by certified mail upon Bildisco Debtor-in-Possession on July 16, 1980.

2. Bildisco is, and has been at all times material herein, a partnership duly organized under, and existing by virtue of, the laws of the State of New Jersey.

3. At all times material herein, Bildisco has maintained its principal office and place of business at Cragwood Road, Avenel, New Jersey, herein called the Avenel place of business, and at all times material herein has been continuously engaged in the retail and wholesale sale and distribution of building supply products. Bildisco's Avenel place of business is its only facility involved in this proceeding.

4. In the course and conduct of Bildisco's business operations during the twelve months preceding June 3, 1980, which operations are representative of its operations at all times material herein, Bildisco caused to be purchased, transferred and delivered to the Avenel place of business, buidling supplies and other materials valued in excess of $50,000, of which, goods and materials valued in excess of $50,000 were transported to the Avenel place of business in interstate commerce directly from states of the United States other than the State of New Jersey.

5. Bildisco is and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

6. (a) Since on or about April 14, 1980, Bildisco has been subject to a voluntary arrangement proceeding pursuant to Chapter 11 of the Bankruptcy Act, 29 U.S.C. Sec. 1101, *et seq.*, in the United States Bankruptcy Court for the District of New Jersey.

(b) Since on or about April 17, 1980, Bildisco has been duly designated as Debtor-In-Possession for Bildisco pursuant to the arrangement described above in paragraph 6(b), and as such, has full authority to continue the operation of and exercise all powers necessary to the administration of the business of Bildisco.

7. By virtue of the events described above in paragraph 6, Bildisco, Debtor-in-Possession is, and has been at all times material herein, since April 17, 1980, an alter ego in

bankruptcy to Bildsico. Bildisco and Bildisco, Debtor-in-Possession are together referred to as Respondent herein.

8. The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

9. At all times material herein, the following named persons have occupied the positions with Respondent set forth below opposite their respective names:

Sal Valente, General Partner
Arthur Gershon, General Partner
Joan Burchfield, Bookkeeper

10. At all times material herein, Sal Valente and Arthur Gershon, referred to above in paragraph 9, have been and are now supervisors within the meaning of Section 2(11) of the Act, and all of the persons named above in paragraph 9 have been and are now agents within the meaning of Section 2(13) of the Act, acting on behalf of Respondent.

11. All warehousemen, drivers and mechanics including straight truck drivers, outside field service men, order pickers, helpers, working foremen, employed at Respondent's Avenel place of business, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

12. On or before May 1, 1979 a majority of the employees of Respondent in the unit described above in paragraph 11, designated and selected the Union as its representative for the purposes of collective bargaining with Respondent.

13. At all times since on or before May 1, 1979, the Union has been and is now, pursuant to Section 9(a) of the Act, the exclusive representative of the employees in the unit described above in paragraph 11 for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

14. As a result of the respresentative status of the Union described above in paragraph 13, Respondent and the Union have entered successive collective bargaining agree-

ments, the most recent of which is effective from May 1, 1979 through April 30, 1982.

15. Since on or about January 3, 1980, Respondent has unilaterally changed existing terms and conditions of employment of its employees employed in the unit described above in paragraph 11 by failing and refusing to make the required pension, health and welfare contributions as required by the collective bargaining agreement described above in paragraph 14.

16. Since on or about January 3, 1980, Respondent has unilaterally changed existing terms and conditions of employment of its employees by failing and refusing to remit to the Union, dues withheld from the pay of employees in the unit described above in paragraph 11 as required by the collective bargaining agreement described above in paragraph 14.

17. Since on or about May 1, 1980, Respondent has unilaterally changed existing terms and conditions of employment of its employees employed in the unit described above in paragraph 11 by failing and refusing to pay wage increases to its employees in the unit described above in paragraph 11 as required by the collective bargaining agreement described above in paragraph 14.

18. By the acts described above in paragraphs 15, 16 and 17, and by each of those acts, Respondent did refuse, and is now refusing to bargain collectively with the Union, the representative of its employees, and Respondent thereby did engage in, and is now engaging in, unfair labor practices within the meaning of Section 8(a)(5) of the Act.

19. By the acts described above in paragraphs 15, 16 and 17, and by each of those acts, Respondent did interfere with, restrain and coerce, and is now interfering with, restraining and coercing, its employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and Respondent thereby did engage in, and is now engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

20. The activities of Respondent, described above in paragraphs 15 through 19, occurring in connection with the operations of Respondent, described above in paragraphs 2

through 7, have a close, intimate and substantial relation to trade, traffic and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 8(a)(1) and (5), and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 9th day of March, 1981 at 11:00 a.m. in the Federal Building, Room 1600, 970 Broad Street, Newark, New Jersey 07102, a hearing will be conducted before a duly designated Administrative Law Judge of the Board of the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person or otherwise and to give testimony. Form NLRB-4668, Summary of Standard Procedures in Formal Hearings Held before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

PLEASE TAKE FURTHER NOTICE that, pursuant to Section 102.20 and Section 102.21 of the Board's Rules and Regulations, Respondent shall file with the undersigned Acting Regional Director, acting in this matter as agent of the Board, an original and four (4) copies of an Answer to the Complaint within ten (10) days from service thereof, and that, unless it does so, all of the allegations contained in the Complaint shall be deemed to be admitted to be true and may be so found by the Board. Immediately upon the filing of its Answer, Respondent shall serve a copy thereof on each of the other parties.

WHEREFORE, the General Counsel of the Board, on behalf of the Board, by the Acting Regional Director for the Twenty-second Region, on this 31st day of July, 1980, issues this Complaint and Notice of Hearing against BILDISCO, and BILDISCO, DEBTOR-IN-POSSESSION, Respondent herein.

/s/ WILLIAM A. PASCARELL

WILLIAM A. PASCARELL,
Acting Director
National Labor Relations Board
Twenty-second Region
970 Broad Street
Newark, New Jersey 07102

Attachment

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
TWENTY-SECOND REGON

Case No. 22-CA-10061

BILDISCO AND BILDISCO, DEBTOR-IN-POSSESSION

AND

LOCAL 408, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

FIRST AMENDED COMPLAINT AND NOTICE OF HEARING

It having been charged by Local 408, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, of 1907 Morris Avenue, Union, New Jersey 07083, herein called the Union, that Bildisco and Bildisco, Debtor-in-Possession, of P.O. Box B, Rahway, New Jersey, have engaged in and are now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, 29 U.S.C. Sec. 151 *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board, herein called the Board, by the undersigned Regional Director for the Twenty-second Region, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, 29 C.F.R. Sec. 102, *et seq.*, hereby issues this First Amended Complaint and Notice of Hearing, and alleges as follows:

1. (a) The Charge in this proceeding was filed on June 3, 1980.

(b) A copy of the Charge in this proceeding was served by registered mail upon Bildisco on June 4, 1980 and on Bildisco, Debtor-in-Possession on July 21, 1980.

(c) The First Amended Charge in this proceeding was filed on July 16, 1980.

(d) A copy of the First Amended Charge in this proceeding was served by certified mail upon Bildisco on July 16, 1980.

(e) A copy of the First Amended Charge in this proceeding was served by certified mail upon Bildisco Debtor-in-Possession on July 16, 1980.

(f) The Second Amended Charge in this proceeding was filed on August 28, 1980.

(g) A copy of the Second Amended Charge in this proceeding was served by certified mail upon Bildisco, and Bildisco, Debtor-in-Possession on August 28, 1980.

2. Bildisco is, and hs been at all times material herein, a partnership duly organized under, and existing by virtue of, the laws of the State of New Jersey.

3. At all times material herein, Bildisco has maintained its principal office and place of business at Cragwood Road, Avenel, New Jersey, herein called the Avenel place of buisness, and at all times material herein has been continuously engaged in the retail and wholesale sale and distribution of building supply products. Bildisco's Avenel place of business is its only facility involved in this proceeding.

4. In the course and conduct of Bildisco's business operations during the twelve months preceding June 3, 1980, which operations are representative of its operations at all times material herein, Bildisco caused to be purchased, transferred and delivered to the Avenel place of business, building supplies and other materials valued in excess of $50,000, of which, goods and materials valued in excess of $50,000 were transported to the Avenel place of business in interstate commerce directly from states of the United States other than the State of New Jersey.

5. Bildisco is and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

6. (a) Since on or about April 14, 1980, Bildisco has been subject to a voluntary arrangement proceeding pursuant to Chapter 11 of the Bankruptcy Act, 29 U.S.C. Sec. 1101, *et seq.*, in the United States Bankruptcy Court for the District of New Jersey.

(b) Since on or about April 17, 1980, Bildisco has been duly designated as Debtor-in-Possession for Bildisco pursuant to the arrangement described above in paragraph 6(a), and as such, has full authority to continue the operation of and exercise all powers necessary to the administration of the business of Bildisco.

7. By virtue of the events described above in paragraph 6, Bildisco, Debtor-in-Possession is, and has been at all times material herein, since April 17, 1980, an alter ego in bankruptcy to Bildisco. Bildisco and Bildisco, Debtor-in-Possession are together referred to as Respondent herein.

8. The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

9. At all times material herein, the following named persons have occupied the positions with Respondent set forth below opposite their respective names:

Sal Valente—General Partner
Arthur Gershon—General Partner
Joan Burchfield—Bookkeeper

10. At all times material herein, Sal Valente and Arthur Gershon, referred to above in paragraph 9, have been and are now supervisors within the meaning of Section 2(11) of the Act, and all of the persons named above in paragraph 9 have been and are now agents within the meaning of Section 2(13) of the Act, acting on behalf of Respondent.

11. All warehousemen, drivers and mechanics including straight truck drivers, outside field service men, order pickers, helpers, working foremen, employed at Respondent's Avenel place of business, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

12. On or before May 1, 1979, a majority of the employees of Respondent in the unit described above in paragraph 11, designated and selected the union as its representative for the purposes of collective bargaining with Respondent.

13. At all times since on or before May 1, 1979, the Union has been and is now, pursuant to Section 9(a) of the

Act, the exclusive representative of the employees in the unit described above in paragraph 11 for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

14. As a result of the representative status of the Union described above in paragraph 13, Respondent and the Union have entered successive collective bargaining agreements, the most recent of which is effective from May 1, 1979 through April 30, 1982.

15. Since on or about January 3, 1980, Respondent has unilaterally changed existing terms and conditions of employment of its employees employed in the unit described above in paragraph 11 by failing and refusing to make the required pension, health and welfare contributions as required by the collective bargaining agreement described above in paragraph 14.

16. Since on or about January 3, 1980, Respondent has unilaterally changed existing terms and conditions of employment of its employees by failing and refusing to remit to the Union, dues withheld from the pay of employees in the unit described above in paragraph 11 as required by the collective bargaining agreement described above in paragraph 14.

17. Since on or about January 3, 1980, Respondent has unilaterally changed existing terms and conditions of employment of its employees employed in the unit described above in paragraph 11 by failing and refusing to pay vacation benefits as required by the collective bargaining agreement described above in paragraph 14.

18. Since on or about May 1, 1980, Respondent has unilaterally changed existing terms and conditions of employment of its employees employed in the unit described above in paragraph 11 by failing and refusing to pay wage increases to its employees in the unit described above in paragraph 11 as required by the collective bargaining agreement described above in paragraph 14.

19. By the acts described above in paragraphs 15 through 18, and by each of those acts, Respondent did refuse, and is now refusing to bargain collectively with the

Union, the representative of its employees, and Respondent thereby did engage in, and is now engaging in, unfair labor practices within the meaning of Section 8(a)(5) of the Act.

20. By the acts described above in paragraphs 15 through 18, and by each of those acts, Respondent did interfere with, restrain and coerce, and is now interfering with, restraining and coercing, its employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and Respondent thereby did engage in, and is now engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

21. The activities of Respondent, described above in paragraphs 15 through 20, occurring in connection with the operations of Respondent, described above in paragraphs 2 through 7, have a close, intimate and substantial relation to trade, traffic and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 8(a)(1) and (5), and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 9th day of March, 1981 at 11:00 a.m. in the Federal Building, Room 1600, 970 Broad Street, Newark, New Jersey 07102, a hearing will be conducted before a duly designated Administrative Law Judge of the Board on the allegations set forth in the above First Amended Complaint, at which time and place you will have the right to appear in person or otherwise and to give testimony. Form NLRB-4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

PLEASE TAKE FURTHER NOTICE that, pursuant to Section 102.20 and Section 102.21 of the Board's Rules and Regulations, Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the Board, an original and four (4) copies of an Answer to the First Amended Complaint within ten (10) days from service thereof, and that, unless it does so, all of the allegations contained in the Complaint shall be deemed to be admitted

to be true and may be so found by the Board. Immediately upon the filing of its Answer, Respondent shall serve a copy thereof on each of the other parties.

WHEREFORE, the General Counsel of the Board, on behalf of the Board, by the Regional Director for the Twenty-second Region, on this 8th day of October, 1980, issues this First Amended Complaint and Notice of Hearing against Bildisco, and Bildisco, Debtor-in-Possession, Respondent herein.

/S/ ARTHUR EISENBERG

ARTHUR EISENBERG
Regional Director
National Labor Relations Board
Twenty-second Region
970 Broad Street
Newark, New Jersey 07102

Attachment

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. 22-CA-10061

BILDISCO AND BILDISCO, DEBTOR-IN-POSSESSION

AND

LOCAL 408, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

MOTION TO THE NATIONAL LABOR RELATIONS BOARD FOR SUMMARY JUDGMENT

The General Counsel of the National Labor Relations Board, by the undersigned counsel for the General Counsel, hereby moves, pursuant to Section 102.24 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, 29 C.F.R. Section 102, *et seq.*, for summary judgment in the above-captioned case, against Respondent, Bildisco and Bildisco, Debtor-In-Possession, based upon the failure of Respondent to file an Answer to the Complaint in this case as required by Section 102.20 and 102.21 of the Board's Rules and Regulations, and for such other and further relief as may be proper in the circumstances.

A Memorandum setting forth the grounds relied upon in support of this Motion is filed herewith.

Dated at Newark, New Jersey, this 27th day of January, 1981.

/s/ MARGUERITE R. GREENFIELD

MARGUERITE R. GREENFIELD
Counsel of the General Counsel
National Labor Relations Board
Twenty-Second Region
970 Broad Street
Newark, New Jersey 07102

Ravin, Katchen & Greenberg
A Professional Corporation
Counselors at Law

January 29, 1981

National Newark & Essex Building
744 Broad Street
Newark, New Jersey 07102
Suite 3200
(201) 642-1540

Robert Volger, Acting Executive Secretary
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Washington, D.C. 20570

Re: Bildisco and Bildisco,
Debtor in Possession
Case No. 22-CA-10061

Dear Mr. Volger:

This firm is counsel to Bildisco, Debtor in Possession in Proceedings for Reorganization pursuant to Chapter 11 of the Bankruptcy Code. We are in receipt of the Motion of the General Counsel of the National Labor Relations Board for Summary Judgment with reference to the above captioned case.

Please be advised that Bildisco is in the process of obtaining special counsel to represent it in connection with the pending proceeding before the National Labor Relations Board. Employment of such special counsel must be authorized by Order of the United States Bankruptcy Court for the District of New Jersey, before which the Reorganization Proceedings are pending.

In light of the above, we request, on behalf of Bildisco and Bildisco, Debtor in Possession, that both the Motion for Summary Judgment and the hearing on the Complaint scheduled for March 9, 1981 be adjourned for a period of sixty days to allow the Debtor in Possession to make appropriate application to the Bankruptcy Court for authorization to retain special counsel to represent them before the National Labor Relations Board.

Very truly yours,

/s/ JACK M. ZACKIN
JACK M. ZACKIN

JMZ:AM
CC: MARGUERITE R. GREENFIELD, ESQ.
ALBERT G. KROLL, ESQ.
MR. SAL VALENTE
LOCAL 408 A/W INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMENT AND HELPERS OF AMERICA

NATIONAL LABOR RELATIONS BOARD
REGION 22
Federal Building, 970 Broad Street
Newark, New Jersey 07102

February 3, 1981

John C. Gruesdale
Executive Secretary
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Washington, D.C. 20570

Re: Bildisco and Bildisco
Debtor in Possession
Case No. 22-CA-10061

Dear Mr. Truesdale:

Please be advised that Counsel for the General Counsel in the above matter opposes Respondent's request for a sixty day adjournment of General Counsel's Motion for Summary Judgment filed on January 27, 1981, to enable Respondent to obtain persmission from the United States Bankruptcy Court to obtain labor counsel for this proceeding.

As in demonstrated by the exhibits filed with General Counsel's Motion, Bildisco and Bildisco Debtor in Possession, the parties named in the bankruptcy proceeding were named and served with the original charge in June 1980 as well as with the Complaint and First Amended Complaint in July and October 1980. Those exhibits further reveal that counsel for Respondent was served with both the Complaint and the First Amended Complaint. Thus, Respondent's counsel has had more than six months to file an answer or to seek an extension of time to file an answer in order to obtain the Court's authorization to employ labor counsel, and has failed to do so.

Accordingly, Respondent's untimely request should be rejected and General Counsel's Motion for Summary Judgment should be granted.

Very truly yours,

/s/ MARGUERITE R. GREENFIELD
MARGUERITE R. GREENFIELD
Counsel for the General Counsel

cc: *CERTIFIED MAIL*

Albert G, Kroll, Esq.
Zazzali,Zazzali & Whimpple
Gateway I
Newark, New Jersey 07102

Bildisco and Bildisco,
Debtor-In-Possession
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REGULAR MAIL

Local 408 a/w International
Brotherhood of Teamsters,
Chauffeurs, Warehousemen
and Helpers of America
1907 Morris Avenue
Union, New Jersey 07083

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case 22-CA-10061

BILDISCO AND BILDISCO, DEBTOR-IN-POSSESSION

AND

LOCAL 408, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

ORDER TRANSFERRING PROCEEDING TO THE BOARD AND NOTICE TO SHOW CAUSE

On July 31, 1980, the Acting Regional Director for Region 22 of the National Labor Relations Board issued a Complaint and Notice of Hearing and, on October 8, 1980, the Regional Director issued a First Amended Complaint and Notice of Hearing in the above-entitled proceeding, alleging that the Respondent has engaged in and is engaging in certain unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended.

Thereafter, on February 2, 1981, the General Counsel, by counsel, filed with the Board in Washington, D.C., a Motion to the National Labor Relations Board for Summary Judgment and a Memorandum in support thereof, with exhibits attached. The General Counsel submits that Respondent failed to file an answer within the 10 days specified by the complaint and first amended complaint, that by letter dated October 27, 1980, Respondent was advised that summary judgment would be sought if no answer was received by October 31, 1980, and that Respondent has failed to file any answer in this preceeding as required by the Board's Rules and Regulations. He submits that as Respondent has failed to admit, deny, affirm or in any way answer the charges alleged therein and disregarded opportunities extending the time for the filing of an answer that the allega-

tions of the first amended complaint should be deemed admitted and found by the Board to be true. He therefore requests the Board to enter summary judgment against Respondent and issue an appropriate remedial order which would require the Respondent to cease and desist from engaging in the unlawful conduct alleged in the amended complaint, and grant such affirmative relief, incuding payment of the required pension, health and welfare contributions and remission of withheld dues to Local 408, payment of vacation benefits and wage increases to unit employees and the posting of an appropriate notice, and other such relief as is necessary to rectify the effects of the violations. In a response to the General Counsel's Motion dated January 29, 1981, the Respondent requested that proceedings on the Motion for Summary Judgment and the hearing scheduled for March 9, 1981, be stayed for a period of sixty days to allow the Respondent, which is engaged in bankruptcy proceedings before the United States Bankruptcy Court for the District of New Jersey, time to make application to the Bankruptcy Court for authorization to retain special Counsel to represent Respondent in this matter. In a letter dated February 3, 1981, the General Counsel opposed Respondent's request. He noted that Respondent has had more than six months to file an answer or to seek an extension of time in which to file an answer and to obtain Court authorization to employ labor counsel and has failed to do so. The General Counsel urges that Respondent's request be rejected and the Motion for Summary Judgment be granted.

The Board having duly considered the matter,

IT IS HEREBY ORDERED that the above-entitled proceeding be, and it hereby is, transferred to and continued before the Board in Washington, D.C., and that the hearing scheduled herein for March 9, 1981, be, and it hereby is, postponed indefinitely.

NOTICE IS HEREBY GIVEN that cause be shown, in writing, filed with the Board in Washington, D.C., on or before February 23, 1981 (with affidavit of service on the parties to this proceeding), why the General Counsel's Motion for Summary Judgment should not be granted.

Dated, Washington, D.C., February 9, 1981.

By Direction of the Board:

/s/ ENID W. WEBER

ENID W. WEBER
Associate Executive Secretary

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case 22-CA-10061

BILDISCO AND BILDISCO, DEBTOR-IN-POSSESSION

AND

LOCAL 408, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

RESPONSE OF BILDISCO AND BILDISCO DEBTOR-IN-POSSESSION TO NOTICE TO SHOW CAUSE

INTRODUCTION

Respondent, Bildisco and Bildisco, Debtor-in-Possession submit this response pursuant to the Notice issued by direction of the National Labor Relations Board on February 9, 1981 to show cause in writing why the General Counsel's Motion for Summary Judgment should not be granted.

RESPONDENT'S FAILURE TO ANSWER

The General Counsel's Motion is based on the failure of Respondent to file an Answer within the time permitted by the Board's Rules and Regulations. Respondent submit that its failure to file an Answer was due to the disruption in its operations caused by its reorganization proceedings under Chapter 11 of the United States Bankruptcy Code. Respondent has been and is currently attempting to retain and obtain Court approval to employ special labor counsel to handle the within matter, but has not to date obtained the requisite Order from the Bankruptcy Court. Meritorious defenses exist to the Complaint filed herein and Respondent contends that there will be no prejudice to the other parties by allowing Respondent additional time to file an Answer so that a full and complete hearing can be afforded to the parties.

RESPONDENT'S DEFENSE

In *Shopmen's Union No. 455* v. *Kevin Steel Prods.*, 519 F.2d 698 (2d Cir. 1975), the United States Court of Appeals held that upon the filing of a Petition under Chapter XI of the Bankruptcy Act a new entity, i.e. the Debtor-in-Possession, takes over the operation of the Debtor's business. As pointed out in the First Amended Complaint filed herein Respondent filed a voluntary Petition under Chapter 11 of the Bankruptcy Code of April 14, 1980 and has operated its business as a Debtor-in-Possession since that date.

On January 15, 1981 the Bankruptcy Court for the District of New Jersey entered an Order granting Respondent's Motion to reject its union contract dated May 1, 1979 with Teamsters Local No. 408. A copy of said Order is annexed hereto as Exhibit "A". Section 365(g) of the Bankruptcy Code, 11 U.S.C. Sec. 365(a) provides that rejection for executory contract relates back to immediately before the filing of the Chapter 11 Petition. It is clear, therefore, based upon the Order of the Bankruptcy Court that from and after April 14, 1980 no union contract existed between Respondent and the Teamsters Union. Accordingly all allegations contained in the Firt Amended Complaint relating to post April 14, 1980 activities are controverted as a matter of law. Similarly the remedies sought by the General Counsel to the extent they include a cease and desist Order, payment of pension, health and welfare contributions, vacation benefits and wage increases for the period subsequent to April 14, 1980 and the posting of appropriate notice are unwarranted since no collective bargaining agreement is currently in effect or has been in effect since April 14, 1980.

With respect to the period from January 3, 1980, the date of the first alleged violation, to April 14, 1980, Respondent contends that to any extent Respondent was in arrears in making pension, health and welfare contributions, such conduct did not constitute a unilateral change in existing terms and conditions of employment within the meaning of the National Labor Relations Act and the Board's Regulations. Any upaid contributions constitute nothing more than

claims in Respondent's Chapter 11 proceeding which sould be filed with the Bankruptcy Court, as required by the Bankruptcy Code, and will be subject to allowance in the Chapter 11 proceedings.

Respondent denies that it failed to remit union dues as alleged in Paragraph 16 of the First Amended Compalint inasmuch as the union requested Respondent not to withhold dues beginning at or near the date set forth in the First Amended Complaint as the commencement of the alleged failure to remit.

Respondent similarly denies the allegations set forth in Paragraph 17 of the First Amended Complaint that it failed and refused to pay vacaction benefits since on or about January 3, 1980.

CONCLUSION

For the reasons set forth above it is respectfully submitted that the Motion for Summary Judgement filed herein be denied. *It is further respectfullly requested that Respondent be afforded a reasonable period of time to obtain special counsel* and to fully respond to the allegations contained in the First Amended Complaint. Base on the substantial factual and legal issues present in the instant case, it is submitted that this matter should only be resolved after a full hearing.

RAVIN, KATCHEN & GREENBERG, P.A.
Attorneys for Respondent Bildisco and Bildisco,
Debtor in Possession

By: _____
JACK M. ZACKIN

CERTIFICATION OF SERVICE

This is to certify that the Response of Bildisco and Bildisco, Debtor-in-Possession to Notice to Show Cause have been served on the following parties by certified mail this 20th day of February, 1981.

Albert G. Kross, Esq.
Zazzali and Zazzali
Gateway I
Newark, New Jersey 07102

Marguerite R. Greenfield
Counsel for the General Counsel
National Labor Relations Board
Twenty-second Region
970 Broad Street
Newark, New Jersey 07102

Local 408 a/w International
Brotherhood of Teamsters, Chauffeurs,
Warehousemen and Helpers of America
1907 Morris Avenue
Union, New Jersey 07083

JACK M. ZACKIN

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
No. 80-07288

In the Matter of:

BILDISCO, A General Partnership
in the State of New Jersey, Debtor.

In Proceedings for a Reorganizaton under Chapter 11 of the Bankruptcy Code

ORDER

This matter being opened to the Court by Ravin Katchen & Greenburg, P.A. on the return date of Notice to Reject Executory Union Contract with Teamsters Union Local No. 408, in the presence of Zazzali, Zazzali & Kroll, Esqs, the Court having considered the testimony and evidence presented, and having considered the arguments of counsel in opposition to the Motion of the Debtor, and due cause appearing;

IT IS on this 15th day of January 1981;

ORDERED:

1. That the Motion of the Debtor in Possession to reject Executory Union Contract dated May 1, 1979 with Teamsters Union Local No. 408, be and hereby is granted.

2. That said Teamsters Union Local No. 408 shall be allowed thirty (30) days from the date of entry of the within Order to file its claim for damages, if any, resulting from such rejection.

/s/ AMEL STARK
Bankruptcy Judge

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. 22-CA-10061

BILDISCO AND BILDISCO, DEBTOR IN POSSESSION

AND

LOCAL 408, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

GENERAL COUNSEL'S RESPONSE TO RESPONDENT'S RESPONSE TO NOTICE TO SHOW CAUSE

Counsel for General Counsel urges the Board to reject Respondent's defense for its failure to file an answer to the Complaint in the within proceeding. The Complaint alleges, *inter alia*, that Respondent unilaterally changed terms and conditions of employment in violation of Section 8(a)(1) and (5) of the Act. Respondent's Response requests time to obtain labor counsel and urges that the allegations are controverted by a recent order of the Bankruptcy Court rejecting the collective bargaining agreement between Respondent and the Charging Union.

By letter dated February 1, 1981 Counsel for the General Counsel urged the Board to reject Respondent's January 29, 1981 request for an adjornment to obtain labor counsel, on the grounds that Respondent's counsel had had more than six months to file an answer or to seek and to obtain labor counsel and had failed to do so. Accordingly, Counsel for General Counsel submits that Respondent's failure to answer the Complaint constitutes default and that its defense should be rejected as untimely, no good cause having been shown. See *APD Transport Corp.* and its *alter ego National Book Consolidators, Inc.*, 253 NLRB No. 56 (1980).

Dated at Newark, New Jersey on this 25th day of February, 1981.

Respectfully submitted,

/S/ MARGUERITE R. GREENFIELD
MARGUERITE R. GREENFIELD
Counsel for the General Counsel
National Labor Relations Board
Twenty-second Region
970 Broad Street
Newark, New Jersey 07102

This is to certify that the General Counsel's Response to Respondent's Response to Notice to Show Cause have been served on the following parties:

CERTIFIED MAIL

Albert G. Kroll, Esq.
Zazzali, Zazzali & Whipple
Gateway One
Newark, New Jersey 07102

Bildisco and Bildisco
Debtor-In-Possession
Craigwood Road
Avenel, New Jersey

Bildisco and Bildisco
Debtor-In-Possession
P.O. Box B
Rahway, New Jersey 07065

Richard Honig, Esq.
Ravin, Katchen & Greenberg
744 Broad Street
Newark, New Jersey 07102

Local 048 a/w International
Brotherhood of Teamsters, Chauffeurs,
Warehousemen and Helpers of America
1907 Morris Avenue
Union, New Jersey 07083

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. 22-CA-10061

BILDISCO, AND BILDISCO, DEBTOR-IN-POSSESSION

AND

LOCAL 404, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

NOTICE OF MOTION FOR RECONSIDERATION

TO: ROBERT VOLGER
Executive Secretary
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Washington, D.C. 20570

PLEASE TAKE NOTICE, that Bildisco and Bildisco, Debtor-In-Possession ("Respondent"), applies to the National Labor Relations Board to reconsider and vacate its Decision and order in the within matter dated April 23, 1981. Respondent will rely upon the enclosed memorandum and exhibits attached thereto.

ROTHBARD, HARRIS & OXFELD
Attorneys for Bildisco and Bildisco, Debtor-in-Possession

BY: ARNOLD S. COHEN
ARNOLD S. COHEN
For the Firm

Dated: MAY 20, 1981

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. 22-CA-10061

BILDISCO, AND BILDISCO, DEBTOR-IN-POSSESSION

AND

LOCAL 404, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA.

MEMORANDUM IN SUPPORT OF MOTION TO RECONSIDER DECISION AND ORDER

STATEMENT OF THE CASE

This Memorandum is submitted by Special Labor Counsel for Bildisco and Bildisco, Debtor-in-Possession ("Respondent"), in support of Motion to Reconsider Decision and Order rendered April 23, 1981, by the National labor Relations board ("Board"), in the within matter. Special labor Counsel was designated by the United States Bankruptcy Court for the District of New Jersey by Order entered April 16, 1981 (Exhibit "A").

On February 2, 1981, counsel for the Board's General Counsel (Regional Director for Region 22), filed a Motion for Summary Judgment with the Board based upon Respondent's alleged failure to file an Answer according to the provisions of Sections 102.20 and 102.22 of the Board's Rules and Regulations, Series 8, as amended. By Order and Decision dated April 23, 1981, the Board granted the Motion for Summary Judgment. Respondent hereby requests that the Board reconsider its Order and Decision.

The Regional Director for Region 22 issued a complaint and notice of hearing on July 31, 1980 and a First Amended Complaint and notice of hearing on October 8, 1980, against Respondent, alleging that Respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Na-

tional Labor Relations Act, as amended. Specifically, the complaint alleged that Respondent failed to make pension, health and welfare contributions; remit union dues; and pay vacation benefits to certain of its employees, members of Local 408, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("Union").

The Respondent has not answered the complaint, because until April 16, 1981, it was not represented by Special Labor Counsel. Specifically, on January 29, 1980, counsel for Respondent in its proceedings for reorganization requested that the Motion and the scheduled hearing be adjourned for sixty (60) days so that an appropriate application could be made to the Bankruptcy Court for authorization to retain Special Counsel (Exhibit "B"). On February 2, 1981, the Regional Director for Region 22 indefinitely postponed the hearing (Exhibit "C"). On February 20, 1981, an application was made to appoint Special Counsel (Exhibit "D"). Thus, Respondent hereby submits that factually, equity compels that good cause has been established and that the Order Granting Summary Judgment be reconsidered and vacated, with Respondent given an opprtunity to file an answer.*

ARGUMENT

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

> "The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true

---

* Respondent filed an answer with Region 22 with a copy of the within memorandum.

and shall be so found by the Board, *unless good cause to the contrary is shown.*" (Emphasis supplied).

Accordingly, the allegations contained in the First Amended Complaint herein will not be deemed to be admitted as true if respondent can establish good cause for failing to file a timely answer.

The facts herein compel the conclusion that good cause has been established. At the time the Motion for Summary Judgment was filed, counsel for Respondent in its reorganization proceeding requested that the motion, and the scheduled hearing be adjourned for sixty (60) days so that an appropriate application could be made to the Bankruptcy Court for authorization to retain Special Labor Counsel. On February 2, 1981, the hearing was indefinitely adjourned. The aforementioned application for special counsel was made on February 20, 1981. It was granted on April 16, 1981. Thus, counsel for the Respondent put the Board on notice of the difficulties encountered by the Respondent, and requested that this matter be ajdourned until Respondent could be appropriately represented. Still the Board entered summary judgment, shortly after special counsel was appointed, althrough Respondent requested an adjournment. It is respectfully submitted that Respondent, in essence, is being penalized for failing to file an answer prior to the time in which he was represented by Special Labor Counsel. As Respondent did not have access to an attorney with expertise in labor law until April 16, 1981, it could not properly answer the complaint prior thereto, and should not be penalized for failing to file an answer, or request an extension of time to file. The obligation of the Respondent was to obtain labor counsel. That it has done. Consequently, it should not be penalized for events which occurred prior to retaining such counsel.

Furthermore, it must be stressed that the argument of the Union is without merit; and assuming *arguendo* that it is meritorious, the Respondent would be barred from complying therewith under the provisions of the Bankruptcy Act.

In *Shopmen's Union No. 455* v. *Kevin Steel Prods.*, 519 F.2d 698 (2d Cir. 1975), the United States Court of Appeals

for Second Circuit held that upon the filing of a Petition under Chapter XI of the Bankruptcy Act, a new entity, *i.e.*, the Debtor-in-Possession, takes over the operation of the Debtor's business. As noted in the First Amended Complaint filed herein, Respondent filed a voluntary Petition under Chapter XI of the Bankruptcy Code on April 14, 1980 and has operated its business as a Debtor-in-Possession since that date.

Thereafter, on January 15, 1981, the Bankruptcy Court for the District of New Jersey entered an Order granting Respondent's Motion to reject its union contract dated May 1, 1979 with Teamsters Local No. 408. An Order affirming same was filed by Judge Anne E. Thompson, U.S.D.J. on May 6, 1981 (Exhibit "E"). Section 365(g) of the Bankruptcy Code, 11 U.S.C. Sec. 365(a), provides that rejection of an executory contract relates back to immediately before the filing of the Chapter XI Petition. It is clear, therefore, based upon the Order of Judge Thompson, that from and after April 14, 1980, no contract existed between Respondent and the Union. Accordingly, all allegations contained in the First Amended Complaint relating to post April 14, 1980 activities are controverted as a matter of law. Similarly, the remedies sought by the General Counsel to the extent they include a cease and desist Order, payment of pension, health and welfare contributions, vacation benefits and wage increases for the period subsequent to April 14, 1980 and the posting of appropriate notice are unwarranted since no collective bargaining agreement is currently in effect or has been in effect since April 14, 1980.

With respect to the period from January 3, 1980, the date of the first alleged violation, to April 14, 1980, Respondent contends that to any extent Respondent was in arrears in making pension, health and welfare contributions and wage increases, such conduct did not constitute a unilateral change in existing terms and conditions of employment within the meaning of the National Labor Relations Act and the Board's Regulations. Any unpaid contributions constitute nothing more than claims in Respondent's Chapter XI proceeding which should be filed with the Bankruptcy

Court, as required by the Bankruptcy Code, and will be subject to allowance in the Chapter XI proceedings.

Respondent denies that it failed to remit union dues as alleged in Paragraph 16 of the First Amended Complaint inasmuch as the union requested Respondent not to withhold dues beginning at or near the date set forth in the First Amended Complaint as the commencement of the alleged failure to remit. Respondent similarly denies the allegations set forth in Paragraph 17 of the First Amended Complaint that it failed and refused vacation benefits since on or about January 3, 1980. Furthermore, all claims for vacation benefits must be filed with the Bankruptcy Court under the provisions of the Bankruptcy Code.

CONCLUSION

For all of the reasons set forth above, it is respectfully submitted that the Decision and Order of the Board dated April 23, 1981, granting Summary Judgment in favor of the Union be reconsidered and vacated, and the Respondent be permitted to file an answer to the First Amended Complaint. Further, based upon the substantial factual and legal issues present in the matter, it is submitted that these issues can only be resolved after a plenary hearing.

Respectfully submitted,

ROTHBARD, HARRIS, OXFELD
Special Counsel for Bildisco and Bildisco, Debtor-in-Possession

By: ARNOLD S. COHEN
ARNOLD S. COHEN
For the Firm

Dated: MAY 20, 1981

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. 22-CA-10061

BILDISCO, AND BILDISCO, DEBTOR-IN-POSSESSION,

AND

LOCAL 404, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

ANSWER

BILDISCO and BILDISCO, Debtor-In-Possession, by way of Answer to the First Amended Complaint, says:

1. It is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1(a). It admits the allegations contained in Paragraphs 1(b), (c) (d) and (e).

2. It denies the allegations contained in Paragraph 2.

3. It denies the allegations contained in Paragraph 3.

4. It denies the allegations contained in Paragraph 4.

5. It denies the allegations contained in Paragraph 5.

6. It admits the allegations contained in Paragraph 6(a). It denies the allegations contained in Paragraph 6(b).

7. It denies the allegations contained in Paragraph 7.

8. It is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 8.

9. It admits the allegations contained in Paragraph 9.

10. It admits the allegations contained in Paragraph 10.

11. It admits the allegations contained in Paragraph 11.

12. It admits the allegations contained in Paragraph 12.

13. It denies the allegations contained in Paragraph 13.

14. It admits the allegations contained in Paragraph 14, except that from and after April 14, 1980, no collective bargaining agreement has existed between Respondent and the Union.

15. It denies the allegations contained in Paragraph 15.

16. It denies the allegations contained in Paragraph 16.
17. It denies the allegations contained in Paragraph 17.
18. It denies the allegations contained in Paragraph 18.
19. It denies the allegations contained in Paragraph 19.
20. It denies the allegations contained in Paragraph 20.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Effective April 14, 1980, no collective bargaining agreement existed between the Union and Respondent.

THIRD AFFIRMATIVE DEFENSE

All claims made that Respondent is in arrears in making pension, health and welfare contributions, and in paying vacation benefits since on or about January 3, 1980, until on or about April 13, 1980, must be filed with the Bankruptcy Court, as required by the Bankruptcy Code.

WHEREFORE, Respondent demands judgment dismissing the Complaint with prejudice, together with costs.

ROTHBARD, HARRIS & OXFELD
Attorneys for Bildisco and Bildisco, Debtor-in-Possession

By: ARNOLD S. COHEN
For the Firm

Dated: MAY 20, 1981

CERTIFICATION OF SERVICE

This is to certify that the Answer of Bildisco and Bildisco, Debtor-in-Possession has been served on the following parties by Certified Mail, return receipt requested on May 20, 1981:

Albert G. Kroll, Esq.
Zazzali and Zazzali
Gateway 1
Newark, New Jersey 07102

Local 408 a/w International
Brotherhood of Teamsters, Chauffeurs,
Warehousemen and Helpers of America
1907 Morris Avenue
Union, New Jersey

/s/ ARNOLD S. COHEN
ARNOLD S. COHEN

Dated: MAY 20, 1981

CERTIFICATION

This is to certify that the Notice of Motion, the within Brief and answer of Bildisco and Bildisco, Debtor-in-Possession have been served on the following parties by Certified Mail, r.r.r. on May____, 1981:

Albert C. Kroll, Esq.
Zazzali and Zazzali
Gateway 1
Newark, New Jersey 07102

Marguerite R. Greenfield
Counsel for the General Counsel
National Labor Relations Board
Twenty-Second Region
970 Broad Street
Newark, New Jersey07102

Local 408 a/w International
Brotherhood of Teamsters, Chauffeurs,
Warehousemen and Helpers of America
1907 Morris Avenue
Union, New Jersey 07083

/s/ ARNOLD S. COHEN
ARNOLD S. COHEN

Dated: MAY 20, 1981

May 28, 1981

Re: Bildisco
Case No. 22-CA-10061

Arnold S. Cohen, Esq.
Rotherbard, Harris & Oxfeld
National Newark Building
744 Broad Street
Newark, New Jersey 07102

Dear Mr. Cohen:

This will acknowledge receipt of your Notice of Motion for Reconsideration and Memorandum in Support of Motion for Reconsideration of the Board's Decision and Order in behalf of the Respondent in the above case.

Consistent with the provisions of Section 102.48(d)(2) of the Board's Rules and Regulations, the last date for filing a motion for reconsideration in this case, was May 18, 1981. As your document was postmarked on May 20, and received in this office on May 22, it was untimely submitted and will not be forwarded to the Board for consideration.

For the above reason, I am returning all copies of your document herewith, with the exception of one copy which will be retained for the Board's informal case file.

Sincerely,

JOSEPH E. MOORE
Associate Executive Secretary

cc: Albert G. Kroll, Esq.
NLRB-Region 22

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

80-07283

In the Matter of:

BILDISCO, A GENERAL PARTNERSHIP OF THE STATE OF NEW JERSEY, DEBTOR

IN PROCEEDINGS FOR A REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

VOLUNTARY PETITION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE FOR PARTNERSHIP DEBTOR

The Petition of the above named Debtor respectfully shows:

1. Petitioner's post office address is P.O. Box "B", Rahway, New Jersey 07065.

2. Petitioner, Bildisco, A general Partnership of the State of New Jersey, with its principal place of business at 7 Cragwood Road, Avenel, New Jersey 07001, where it is engaged in the business of distributing, at wholesale, building materials and supplies and fabricating same to customers' specification.

3. Petitioner has had its principal place of business within this district for a longer portion of the 180 days immediately preceding the filing of this Petition than in any other district.

4. Petitioner intends to propose a Plan of Reorganization pursuant to § *1121*.

5. A list of Debtor's creditors and their addresses accompanies this Petition as Schedule "A".

6. An estimated statement of assets and liabilities is annexed to this Petition as Schedule "B".

7. Petitioner is qualified to file this Petition and is entitled to relief under Chapter 11 of Title 11 of the United States Code as a Voluntary Debtor.

WHEREFORE, Petitioner prays for relief under Chapter 11 of Title 11 of the United States Code.

BILDISCO, A GENERAL PARTNERSHIP
OF THE STATE OF N.J.

By: SALVATORE VALENTE

SALVATORE VALENTE
A General Partner

By: ARTHUR GERSHON

ARTHUR GERSHON,
A General Partner

RAVIN, KATCHEN & GREENBERG, P.A.

By: WILLIAM S. KATCHEN

WILLIAM S. KATCHEN

STATE OF NEW JERSEY)
) SS;
COUNTY OF ESSEX)

I, SALVATORE VALENTE, being duly sworn according to law, upon his oath, deposes and says:

I am a member of BILDISCO, A General Partnership of New Jersey, Debtor herein, and I am duly authorized to execute and within Petition on its behalf. The facts contained therein are true to the best of my knowledge, information and belief.

/s/ SALVATORE VALENTE
SALVATORE VALENTE

Sworn and Subscribed to before me this 14th day of April, 1980.

/s/ Grace Doll
GRACE DOLL
A Notary Public of N.J.

TOP 10 CREDITORS

Acme Steel Door, 513 Porter Avenue, Brooklyn, NY 11222 212-384-7800	$159,821.22
Five Star Aluminum, 349 McClean Blvd. & 20th St., Paterson, NJ 07503 279-3553	72,097.10
Dynamic Tool Corp., 141 Lansa Ave., Garfield, NJ 07026 340-3000	60,068.00
Royal Apex, P.O. Box 789, Plainfield, NJ 07061 753-6414	63,952.83
Metal Industries, Box M, Elizabethville, PA 17023 717-362-8196	63,205.92
Revere, Eastern Div., Gilpin Ave., Hauppauge, NY 11105 516-234-7500	57,925.38
Featherlite Mfg. Co., 1210 E. Maple Rd., Troy, Michigan 48084 313-585-8500	55,000.00
Alum Trim, Inc., 918 Stanley Ave., Brooklyn, NY 1120[illegible]8 212-649-1200	51,538.26
Pioneer Industries, 401 Washington Ave., Clarkstadt, NJ 07072 933-1900	37,194.51
Royal Aluminum, 620 Market St., Newark, NJ 07105 589-8880	30,451.50

SCHEDULE "A"

Acme Steel Door, 513 Porter Aven., Brooklyn, NY 11222
Acorn Bldg. Components, 12620 Westwood, Detroit, Mich. 46223
Air-Chek Mfg. Co., Inc., 876 Van Houten Ave., Clifton, NJ 07013
Air Vent, Inc., 6907 N. Knoxville Ave., Peoria, IL 61614
Aluma Trim, Inc. 918 Stanley Ave., Brooklyn, NY 11208
Americal Alum. Window Co., 767 Eastern Ave., Malden, Mass. 02148
V. E. Anderson Mfg. Co., P.O. Box 1250, Owensboro, KY 42301
Appleton Supply Co., 1050 So. Grider St., Appleton, WI 54912
Architectural Hardware, 169-171 York St., Jersey City, NJ 07302
Archbold Ladder Co., P.O. Box 337, Archbold, OH 43502
BQP Ind., Inc. 4747 Irontin St., Denver, CO 80239
Bayonne Steel, Bay Steel Circle, Totowa, NJ 07512
Bilco, P.O. Box 1203, New Haven, CT 06506
The Bogert & Carlough Co., 508-530 Straight St., Paterson, NJ 07509
Builders Mfg., 406 Thornton Ave., Leeds, Ala. 35049
Jack Buvitt, Inc., 60 E. 42nd St., NY, NY 10017
Century Shower Door, 33 Beckwith Ave., Paterson, NJ 07503
John J. Condon Co., 90-09 Liberty Ave., Ozone Pk., NY 11417
Cool Attic Corp., P.O. Box 11558, Fort Worth, TX 76109
Dorwin Mfg., 235 Midland Ave., Saddlebrook, NJ 07662
Dunbar Supply, P.O. Box 7, Dunbar, W. VA 20564
Durawood Corp., % Steinwart Sales, Box 7423, Shawnee Mission, Kansas 66207
Dynamic Tool Corp., 141 Lansa Ave., Garfield, NJ 07026
Featherlite Mfg. Co., 1210 E. Maple Rd., Troy, Mich. 48084
Five Star Aluminum, 349 McClean Blvd. & 20th, Paterson, NJ 07503

General Bathroom Products, 2201 Touhy Ave., Elk Grove Vill, IL 60007
Gerber Industries, Inc., 1510 Fairview Ave., St. Louis, MO 63132
Green Hammer, P.O. Box 32, Dover, NJ 07801
Glass Guard, P.O. Box 817, Webster, Mass. 07570
Glass Laboratories, Inc., 863 65th St., Brooklyn, NY 11220
Harrison Aluminum, P.O. Box 32, Dover, NJ 07801
Industrial Metal Products Co, 300 Baldwin St., New Brunswick, NJ 08901
K.D. Jalousie, 1004 Elizabeth Ave., Elizabeth, NJ 07201
Jamb Patio Door Mfg. Co., Inc., 28 Iroquis Dr., Parlin, NJ 08859
K-Lux, 10091 Manchester Rd., St. Louis, MO 63122
Keller Ind., Box 298, Milford, VA 22514
Kingsford Ornamental Bldg., P.O. Box 7739, Pittsburgh, PA 15215
Lamb & Ritchie Co., 90 Broadway-Rt. 1, Saugus, MA 01906
Leigh Products Co., 1 Highland Ave., Bala Cynwood, PA 19004
Leslie Locke, Ohio St., Lodi, Ohio 44254
Magee-Fine Lumber Co., P.O. Box 110, Irvington, NJ 07091
Metal Engineering, 51 Curtis Ave., Providence, RI 02909
Metal Industries, Box M, Elizabethville, PA 17023
Miami Carey, 203 Garver Rd., Monroe, OH 45050
Mildoor Assemblers, 15 E. Moonachie Rd., Hackensack, NJ 07601
Miller Shepard, 1165 E. Grand St., Elizabeth, NJ 07201
Frank Millner, 102 N. Olden Ave., Trenton, NJ 08606
Modulume Industries, 500 Mutuchen Rd., So. Plainfield, N J 07080
C. E. Morgan, 601 Oregon St., Box 2446, Oshkosh, WI 54901
Nautilus Industries, 19 W. 44th St., NY, NY 10036
Newark Kalamein, 601 S. 13th St., Newark, NJ 07103
Nicholas Mfg., Inc., 49 W. Quackenhust Ave., Dumont, NJ 17628
Norandex, 7120 Krick Rd., Cleveland, OH 44146

Ottowa Door Lite, Inc., 131 Harrison Ave., Zealand, Mich. 49464
Paece, Inc., 1 Executive Dr., Toms River, NJ 08753
Parker Hardware, 27 Ludlow St., NY, NY 10002
Passaic Metal Products Co., Five Central Ave., Clifton, NJ 07015
Peace Company, 7100 Dixie Hwy., Fairfield, OH 45023
Permaseal Mfg. Corp., 288 Lincoln Blvd., Middlesex, NJ 08346
Phillips Mfg. Co., 4601 So. 76th St., Omaha, Nebraska 68127
Pioneer Industries, 401 Washington Ave., Carlstadt, NJ 07072
Plaskolite, Inc., 1770 Joyce Ave., Columbus, OH 43219
Quaker City, Ind., Inc., 301 Mayhill St, Saddlebrook, NJ 07662
Revere, Eastern Div., Gilpin Ave., Hauppauge, NY 11105
Reynolds Metals Co., Richmond, VA 23261
Rich Ladder Co., P.O. Box 120, Carrollton, KY 41008
Robco Distributors, 263 W. Merrick Rd., Valley Stream, NY 11580
Roper Glass Co., Jasper & Hazzard Sts, Philadelphia, Pa. 19125
Royal Aluminum, 620 Market St., Newark, NJ 07105
Royal Apex, P.O. Box 789, Plainfield, NJ 07061
Royal Glass & Millwork Corp., 300 Nordhoff Pl., Englewood, NJ 07631
Royal Oak, Box 1024, Marion, VA 24354
Rusco, R. D. 2 Box 124, Cochranton, Pa. 16314
Sconzo & Son, 724 Montauk Hwy., Bayport, NY 11705
Sealrite Paint, 119 N. 11th St., Brooklyn, NY 11311
Seasonall, 1853 Morris Ave., Union, NJ 07083
Sell-Even, Inc., P.O. Box 101, Reedsville, Wis. 54230
Silvatrim Corp., 140 South Ave., So. Plainfield, NJ 07080
Silverline Mfg., 10 Boright Ave., Kenilworth, NJ 07033
Sky Master, 413 Virginia Dr., Orlando, FL 32803
Sparrow, P.O. Box 32, Dover, NJ 07801
Toco, 5530 Wisconsin Ave., Washington, DC 20015
Thermwell Products, 150 E. 7th St., Paterson, NJ 07524
Tri State, 551 Main Ave., Wallington, NJ 07055

Versatile Dist., Inc., Arnot Pl. & Mercer St., Lodi, NJ 07644
Vulcan Metal Prod., Inc., Box 688, Birmingham, ALA 35210
Jim Walters, P.O. Box 335, Century, Fla. 32535
Ware Industries, 61 Avenue K, Newark, NJ 07105
Weslock Div., 13344 S.Main St., Los Angeles, CA 90061
Window Component & Mfg., 3443 N.W. 107th St., Miami, FL 33167
Woodgrain Moldings, Inc., P.O. Box 1222,Americus, GA 31709
Absolute Fire Protection Co., Inc., 2800 Hamilton Blvd., So. Plainfield, NJ 07080
A.D.P. P.O. Box G 1966, Newark, NJ 07101
Addressograph, P.O. Box 11008, Newark, NJ 07101
Advance Computer Supplies, P.O. Box 492, Princeton, NJ 08540
Amoco, P.O. Box 28261, Raleigh, NC 27611
Anthony's, 1537 Irving St., Rahway, NJ 07065
Blue Cross of NJ, P.O. Box 799, Newark, NJ 07101
Barcaly Brand, 2401 S. Clinton Ave., So. Plainfield, NJ 07080
Benister Co., 425 Main St., Orange, NJ 07050
Central Auto Parts, 35-37 Cooke Ave., Carteret, NJ 07008
C.C. Preventive Maintenance, 260 Columbus Ave., Roselle, NJ 07203
Chemagraphic Products, 301 Veterans Blvd., Rutherford, NJ 07070
Chets Service, 1335 Roosevelt Ave., Carteret, NJ 07008
City Service, P.O. Box 992, Tulsa, OK 74102
Cliff Hardware, 1553 Irving St., Rahway, NJ, 07065
Coffee Systems of NJ, 1400 Rahway Ave., Avenel, NJ 07001
Walter Cohen, 15 Valley St., S. Orange, NJ 07079
Day Timers, P.O. Box 2368, Allentown, PA 16001
Dimensional Bldg. Service, 12 Cornell Pl., Englishtown, NJ 07726
Delta Lighting, 4667 Somerton Rd., Trenose, PA 19047
Eaton Credit Corp., P.O. Box 6738 J., Cleveland, OH 44101

Electro Protective, 25 Eastmans Rd., Parsippanny, NJ 07054
Elizabethtown Gas, P.O. Box 1450, Elizabeth, NJ 07207
Eskay, 24 Hutton Ave., W. Orange, NJ 07052
Exxon, P.O. Box 4298, Houston, TX 77210
Equico Lessors, 1 Garrett Mt. Plaza, W. Paterson, NJ 07422
Equilease Corp., P.O. Box 6000, San Francisco, CA 94160
Florence Landscaping, P.O. Box 1128, Perth Amboy, NJ 08861
Fogel Stationery, 1153 W. Elizabeth Ave., Linden, NJ 07036
Fidelity Paper, 382-388 Bloomfield Ave., Bloomfield, NJ 07003
Flowers by Wesley, 1803 Lincoln Hwy & Rt. 27, Edison, NJ 08817
Garden State Cleaning, 463 Jaques Ave. , Rahway, NJ 07065
Garden State Time Recorder, 510 Sylvan Ave., Englewood Cliffs, NJ 07632
Falcon Supply, P.O. Box 349, Old Bridge, NJ 08657
Garden State Business Machine, 1090 Bristol Rd., Mountainside, NJ 07092
General Electrical Contractors, 1216 New Market Ave., So. Plainfield, NJ 07080
General Tire, 400 Rahway Ave., Elizabeth, NJ 07202
Joseph George, 1157 Maurice Ave., Clark, NJ 07066
Glassfer Motors, 541 E. Spring St., Elizabeth, NJ 07201
Grafi, Inc., 506 E. Palisade Ave., Englewood, NJ 07631
Granet & Granet, 1605 Vaux Hall Rd., Union, NJ 07083
Guardian Life Ins., 201 Park Ave. So., NY, NY 10003
Grayarc Co., 822 Third Ave., Brooklyn, NY 11232
Gulfoil, 433 Hackensack Ave., Hackensack, NJ 07601
IBM P.O. Box 2614 Grand Central Sta., NY, NY 10017
International, 525 Linden Ave. W., Linden, NJ 07036
Jersey Tab. 649 Rahway Ave., Union, NJ 07083
Jersey Wide, 2100 Elizabeth Ave., Rahway, NJ 07065
Jet Messenger, P.O. Box 99, Metuchen, NJ 08840
Knapp Shoes, 1 Knapp Center, Brockton, Mass. 02401
Microdata, 17481 Red Hill Ave., Irvine, CA 92714

Middlesex Water, 1 Woodbridge Center, Woodbridge, NJ 07095
Mid-Interstate, 843 St. George Ave., Roselle, NJ 07083
Thom Mc Cann, 67 Mill Brook St., Worchester, Mass. 01606
Miller Shepard Paper Co., 1165 E. Grand St., Elizabeth, NJ 07208
Midlantic National Bank, 100 Evergreen Pl., E. Orange, NJ 07018
Mobil, P.O. Box 600, Kansas City, MO 64141
Minicomputer Sale & Service. 4 Gary Rd., Union, NJ 07883
Northern Propane, 369 Main St., Woodbridge, NJ 07095
N.J. Mfgrs. Insurance, Sullivan Way, Trenton, NJ 08628
N.J. Belt, P.O. Box 25, Elizabeth, NJ 07215
N.J. Credit Association, 504 Washington Ave., Kenilworth, NJ 07033
N.J. Lumber & Building Dir. Assoc., P.O. Box 359, Springfield, N.J. 07081
N.D.M.D.A., 55 E. Monroe St., Chicago, IL 60603
National State Bank, P.O. Box 1405, Elizabeth, NJ 07207
N.J. Turnpike Authority, New Brunswick, NJ 08903
Norris Chevrolet, 210 South Ave., Westfield, NJ 07091
Pitney Bowes, Walter N. Wheeler Jr. Dr., Stamford, Conn. 06904
Public Service Elec. & Gas, P.O. Box 7777, Elizabeth, NJ 07216
Prudential, P.O. Box 1399, Newark, NJ 07101
Benjamin Purlmutter, 7 Warner Rd., Maplewood, NJ 07040
Rahway Lumber, P.O. Box 1111B, Rahway, NJ 07065
Russo Business Machine, 391 Park Ave., Scotch Plains, NJ 07076
Summit Leasing & Capital, Park 80 Plaza W., Saddle Brook, NJ 07602
Shaw Barton, Coshocton, OH 43812
Silvatoir, 140 South Ave., So. Plainfield, NJ 07080
Star Ledger Co., Star Ledger Plaza, Newark, NJ 07101
Standard Register, Dept. 142, P.O. Box 14506, Cincinnati, OH 45201
Suburban Business Machines, 1053 Stuyvesant Ave., Union, NJ 07083

State Wide, 51 Main St., Woodbridge, NJ 07095
Summit Stationers, 290 Fourteenth St., Norwood, NJ 07648
Spring Motors/Glassfer, 541 Spring St., Elizabeth, NJ 07201
St. Paul's Fire, Ins. N. A.C., 77 Brant Ave., P.O. Box 919, Clark, NJ 07066
Sunway Lites, P.O. Box 8999, Ft. Lauderdale, FL 33310
Till U Communications, 1275 Bloomfield Ave., Bldg. 3, Fairfield, NJ 7006
Trivoli Electric, 322 Rahway Ave., Edison, NJ 08817
Tildin Commercial Alliance, 2 Lambert St. Roslyn Hgts, NY 11577
Union Pension Fund Local 408, 1907 Morris Ave., Union, NJ 07083
Teamsters Local 408 Welfare Fund, 1907 Morris Ave., Union, NJ 07083
Teamsters Union Local 408, 907 Morris Ave., Union, NJ 07083
Vermatrix, 1472 Clinton Ave., Irvington, NJ 07111
West Chemical, P.O. Box 820, Newark, NJ 07101
Westfield Leasing, 773 Central Ave., Westfield, NJ 07090
Paul B. Williams Printing, 1010 Broad St., Newark, NJ 07102
Sani Kill Corp. of N.J. P.O. Box 78, Bell Rose, NY 11426
Bilkay Express Company, 830 Old Corlies Ave., Neptune, NJ 07759
Con Rail, P.O. Box 8068-109, Philadelphia, Pa. 19177
Emery Air Freight, P.O. Box 7, Scranton, Pa. 18501
Halls Motor Tansit, P.O. Box 999, Machanicsburg, Pa. 17055
Mason Dixon Lines, P.O. Box 777, Kingsport, TN 37662
Mc Lean Trucking Co., P.O. Box 213, Winston Salem, NC 27102
Jones Motor Company, Inc., P.O. Box 200 Spring City, Pa. 19475
Roadway Expres, 61 Edgeboro Rd., E. Brunswick, NJ 08816
Oneida Motor Freight, P.O. Box 235, Carlstadt, NJ 07072
Seigel Express, 81 Porete Ave., No. Arlington, NJ 07082

Bargel Truck Leasing Co., 2480 Secaucus Rd., No. Bergen, NJ 07047

Hemingway Transport, Inc., 438 Dartmouth St., New Bedford, Mass. 02742

Preston Trucking Co. 151 Eastern Blvd., Preston, MD 21655

Automotive Collision Specialist, 5401 Tonnele Ave., No. Bergen, N.J. 07049

W. W. Grainger, Inc., 55 Jackson Dr., Cranford, N.J. 07076

Metropolitan Staple Corp., 415 Hope ave., Roselle, N.J. 07203

York Bros. Industries, Ltd., 495 Merrier Rd., Rockville Center, N.Y. 11571

Forle Machinery Company, 2271 Route 22, Union, N.J. 07083

BILDISCO
A General Partnership
(Unaudited and Estimated at March 31, 1980)

ASSETS	
Current Assets:	
Cash	$ 1,500.00
Accounts Receivable	798,000.00
Inventory	540,000.00
Prepaid exenses and other current assets	86,800.00
Total Current Assets	1,426,300.00
Fixed Assets:	
Property and Equipment Net of Accumulated Depreciation	181,500.00
Total Fixed Assets	181,500.00
Other Assets:	3,000.00
Total Assets	1,610,800.00
LIABILITIES	
Current Liabilities:	
Current portion of Notes and Mortgages payable	1,200,900.00
Accounts payable	1,000,700.00
Accrued Expenses	205,500.00
Taxes Payable	26,300.00
Loans payable	25,000.00
Total Current Liabilities	2,458,400.00
Long-Term Debt:	
Notes and mortgage payable	29,000.00
Loans payable	45,000.00
Total Long-Term Debt	74,000.00
TOTAL LIABILITIES	2,532,400.00

NOTE (1) Debtor has in its various banks accounts sums aggregating $1,000.00

NOTE (2) All of Debtor's assets are encumbered by liens. Debtor has a book equity over and above liens of $408,400.00

Date Petition Filed

Case Number

Bankruptcy Judge

1. Petitioner's employers' identification number is: 22-1532271

2. If any of Petitioner's securities are registered under § 12 of the Securities and Exchange Act of 1934, SEC file number is not applicable.

3. The following financial data is the latest available information and refers to Petitioner's condition on March 31, 1980:

a. Total Assets	$1,610,800.00
b. Total Liabilities	$2,532,400.00
Secured debt, excluding that listed below	$1,200,900.00
Debt securities held by more than 100 holders	—0—
Secured	—0—
Unsecured	—0—
Other liabilities, excluding contingent or unliquidated liabilities	Included in total Liabilities.

4. Brief description of Petitioner's businesses: Distribution, at wholesale, of building materials and supplies and fabricating same to customers' specifications.

5. The name of any person who directly or indirectly owns, controls, or hold swith power to vote 50% or more of the voting securities of Petitioner is: None

6. The names of all corporations 25% or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held, with power to vote by Petitioner is not applicable.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In the Matter of:

BILDISCO, A GENERAL PARTNERSHIP OF THE STATE OF NEW JERSEY, DEBTOR.

In Proceedings for a Reorganization Under Chapter 11 of the Bankruptcy Code

AFFIDAVIT PURSUANT TO RULE B 2 E (3)

STATE OF NEW JERSEY)
) SS:
COUNTY OF ESSEX)

WILLIAM S. KATCHEN, of full age, being duly sworn upon his oath, deposes and says:

1. I am a member of the firm of Ravin, Katchen & Greenburg, P.A., 744 Broad Street, Newark, New Jersey.

2. My firm has received the sum of $10,000.00 on account of fees and disbursements herein from the Debtor.

3. My firm has been retained by the Debtor for purposes of representing the Debtor in Possession in connection with the within proceedings under Chapter 11 of the Bankruptcy Code, and has agreed with the Debtor that no additional compensation will be paid, except as may be allowed by the Court for services rendered and to be rendered by our firm herein.

4. No agreement or understanding in any form or guise exists between deponent and any other person for a division of compensation for services rendered in or in connection with this proceeding, and that no such division of compensation prohibited by § 504 of the Bankruptcy Code will be made by deponent, except with members of your deponent's firm.

/s/ WILLIAM S. KATCHEN
WILLIAM S. KATCHEN

Sworn and Subscribed to before me this 14th day of April, 1980.

/s/ GRACE DOLL
GRACE DOLL

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

No. 80-07283

IN PROCEEDINGS FOR A REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

In the Matter of:
BILDISCO, A GENERAL
PARTNERSHIP OF THE
STATE OF NEW JERSEY, DEBTOR.

NOTICE OF MOTION TO REJECT EXECUTORY UNION CONTRACT

TO: TEAMSTERS UNION LOCAL NO. 408
1907 Morris Avenue
Union, New Jersey 07083

SIRS:

NOTICE IS HEREBY GIVEN that the undersigned attorneys for Bildisco, Debtor-in-Possession, will move before the Honorable D. Joseph DeVito, Bankruptcy Judge, at the United States Court House and Post Office Building, Federal Square, Newark, New Jersey, on Tuesday, December 23, 1980, at 10 o'clock in the forenoon, or as soon thereafter as counsel may be heard, for entry of an Order rejecting the May 1, 1979 Labor Contract with Teamsters Union Local No. 408, on the grounds that said Labor Contract is an undue burden to the Debtor and Debtor-in-Possession.

PLEASE TAKE FURTHER NOTICE that at the aforesaid time and place the undersigned will apply for an Order fixing the time for filing a claim for damages, if any, resulting from the above rejection upon an Order of the Court granting such relief.

Ravin, Katchen & Greenberg, P.A.
Attorneys for Bildisco,
Debtor-in-Possession

By: /s/ _____
RICHARD B. HONIG

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
DOCKET NO. 80-02783

IN THE MATTER OF BILDISCO, DEBTOR

TRANSCRIPT OF PROCEEDINGS on Motion for Order rejecting Labor Contract dated May 1, 1979 with Teamsters Union Local No. 408, held before Honorable Amel Stark, Bankruptcy Judge on January 5, 1981 in the Federal Courthouse, Courtroom No. 3, Trenton, New Jersey, at 10:00 o'clock a.m.

APPEARANCES:

RAVIN, KATCHEN & GREENBERG, ESQS.,
Attorneys for Debtor
BY: WILLIAM G. KATCHEN, ESQ.

ZAZZALI, ZAZZALI & KROLL, ESQS.
Attorneys for Local No. 408
Gateway 1
Newark, New Jersey
BY: ALBERT G. KROLL, ESQ.

CHARLES DARROW & ASSOCIATES
143 East State Street
Trenton, New Jersey
BY: BERNICE STIMMEL, CSR

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EXHIBITS

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[3]

PROCEEDINGS

THE COURT: Give your appearances to the reporter, please.

MR. KATCHEN: William Katchen, Ravin, Katchen & Greenberg, attorneys for debtor.

MR. KROLL: Albert G. Kroll of Zazzali, Zazzali & Kroll, attorneys for Local 408 Teamsters Union.

MR. KATCHEN: If your Honor please, this is the return date of a motion by debtor in possession to reject the union contract pursuant to Section 365.

The principal of debtor is in court, and I would like him to testify. Mr. Valente, will you take the stand.

SAL VALENTE, called as a witness, having been first duly sworn, was examined and testified as follows:

THE COURT: State your name and address for the record.

THE WITNESS: Sal Valente, 33 Maple Drive, North Caldwell.

DIRECT EXAMINATION

BY MR. KATCHEN:

Q What is your position with the debtor, Bildisco?

[4] A Partner.

Q Are you also a debtor individually in these proceedings?

A Yes.

Q Are you familiar with the company's operation since the filing of the Chapter 11 proceedings in this court?

A Yes, sir.

Q Previous to that, that time, how long have you been a principal in the debtor?

A A two year period.

Q Has that experience been continuous?

A Yes.

Q What are your responsibilities with the debtor?

A Well, the running of the business, the actual running of the business itself.

Q Does that entail involvement with the laborers?

A Yes.

Q And employees?

A Yes.

Q In what way?

A Well, of course the staffing of the whole organization and overseeing of the staffing.

Q Are you familiar with the cost of operations, including payroll and labor costs?

[5] A Yes.

Q Have you made an analysis of the cost on an annual basis with continuing employees under the labor contract dated May 1, 1979 with the Teamsters Local 408?

A Yes.

Q On an annual basis what would the cost to the debtor be for the next 12 months if the union contract were not rejected?

A Projecting the use of approximately 10 union people—the union people represent 40, 45 percent of our labor rolls.

THE COURT: Ten union employees?

A (Continuing) Projecting ten for the coming year, and—an additional cost of $100,000 over non-union personnel.

Q What function do these union people have?

A Warehousing, shop operations, manufacturing and truck drivers.

Q In today's economy, in your labor market, are there sufficient numbers of non-union employees who could be made available?

MR. KROLL: Objection. There is no foundation laid as to how he has that knowledge.

THE COURT: I will sustain the objection, Mr. Kroll.

[6] Q Have you made inquiry into the labor market in your area as to whether or not there are non-union employees available to fill the role?

A Yes.

Q THE COURT: To do what; what role?

MR. KATCHEN: Warehousing, shop operations and driving trucks, your Honor.

Q What inquiries did you make?

A We have looked at the local market and without even looking we get an average of two to three applications off the street. We are in a very highly industrialized area in Avanel and people are always coming in for applications.

Q $100,000 a year annual extra cost by the union contract, keeping that in force, does that allow for any cost of living increases or other costs that would have to be occasioned any way if you had a union contract?

A Both the analyses I made was based on static situations as of this date. There would be greater increases with the union than non-union because they have built into their contract a cost of living factor where my non-union people don't have that.

Q Approximately what percentage of the inflation or cost of living index would add to your labor cost for the year 1981?

A We have a maximum—I have the contract right in the [7] back. I believe it is 3 points maximum cost of living but that is in addition to their basic contractual increases of May 1st; over and above everything else.

Q If the debtor operation were to continue without union labor, do you foresee any interference in your operation, any curtailment of business, any hardship if the union people were no longer employed?

A No, of course not.

Q It is your opinion the union people don't serve an essential purpose to the debtor's ongoing operation?

A No.

Q On an annual basis of a savings of $100,000* that you forecast, are you able to predict whether or not the debtor can operate profitably?

A That makes a considerable difference in our potential profit for 1981. It is a year of coming out of Chapter 11. We need every penny we can get. A $100,000 swing with out company projecting a potential profit of $100,000 is one hundred percent difference in potential.

Q I assume your answer to my question was that is a difference between a profit and loss?

MR. KROLL: Objection.

THE COURT: I will sustain the objection. If you want to testify, Mr. Katchen, I will [8] put you on the stand.

BY MR. KATCHEN:

Q Mr. Valente, how close is the debtor's reorganization plan to fruition?

A I understand, speaking to other attorneys in your office, we filled out a disclosure statement a week ago. The next step is presentation to your Honor.

Q Has the Creditors Committee approved the plan offered?

A Yes, they have. One of the things they would like expanded is this union situation. They are aware of the problem it has created for us in the past. They are very much concerned with the union situation.

Q Would you outline what the terms of the plan are?

A The creditors have agreed to a 25 percent or 25 cent plan for a four year period. Due to that they feel for the future success of our company the payment is based on the future success of our company and they feel the union is highly involved with that.

MR. KATCHEN: No other questions.

THE WITNESS: May I add—

MR. KATCHEN: No. That is all.

THE COURT: Cross-examination, Mr. Kroll.

[9]

CROSS-EXAMINATION BY MR. KROLL:

Q Sir, do you have any collective bargaining agreements with any other labor organizations?

A No, sir.

Q How many employees are employed in bargaining unit positions?

A Three people.

Q Has that number deviated since you filed the petition for reorganization?

A Since the reorganization date?

Q April 14, 1980.

A April 14th we had 18 people. I might be off one or two, and we have had—we originally cut back to five, now three.

Q When did you cut back to the five?

A From the five to the three?

Q Yes.

A In November.

Q Since November you have operated with three employees?

A Three union employees.

Q Your analysis is based on a projected number of ten people?

A Yes.

[10] Q It is a $100,000 savings?

A Yes. I believe that is approximate.

Q Based on actual number of employees, that being three, your savings would be $30,000 in the same ratio; is that correct?

A I think your answer to that would be specifically that, yes. We would not be able to exist with three people.

Q You have been existing since November.

A We are off season. We are projecting three million dollars in sales and I need people in general.

Q With respect to the $100,000 savings, based on ten employees being employed in the classifications covered by the collective bargaining agreement, what specific wage rate is now being paid those three individuals?

A The wage rate—I used as a base rate $301, based on a 40 hour week. It is $7.65 an hour at this point. On May 1st, it is $8.35.

Q That is pursuant to the terms set forth in the collective bargaining agreement?

A Yes.

Q Are you using the figure with respect to the increase supposed to become effective May 1st?

A The old figure.

Q As of May 1, 1979 rate?

[11] A Yes, sir.

Q With respect to the agreement you have with your employees, isn't it a fact the NLRB has issued a complaint against Bildisco and Bildisco, debtor in possession?

A The union issued a complaint to the NLRB.

MR. KATCHEN: The pendency of that complaint is irrelevant to the motion going forward. The complaint deals

with something in the past and whatever the status is is irrelevant.

THE COURT: I don't think it is material whether or not they have a right to terminate this contract.

MR. KROLL: Yes, your Honor.

Q Of the three employees employed now, of your company, what positions are they?

A Truckdriver, warehouseman, shop man.

Q The truck driver is paid at a straight wage rate of $7.52 an hour?

A You have the contract. I don't have it.

Q Is that approximately it?

A I have $301 a week, divided by 40 hours. I did this on Saturday. It was done very hurriedly.

THE COURT: Is the rate the same for all three men?

[12] THE WITNESS: Yes, sir.

BY MR. KROLL:

Q Exactly $100,000 savings that you anticipate in the year 1981, what wage rate is that based upon?

A It is based on $301 that I have used as my foundation. If someone had a calculator, they could do it.

Q The men are presently making $301 per week?

A That is without fringes. That is the pay itself.

Q How exactly do you intend on saving $100,000; you are going to pay the same wage rate; is that correct?

A Yes. I have made an analysis that indicates $100,000 savings if I were able to go in the market and have non-union employees versus union. $300.00 with fringes; the union is $500 with fringes. That is how I made the analysis.

Q We know they are making $300 in wages; what is the additional?

A It costs me a week in addition to $301, $34.00 in payroll taxes, $26 a week pension—I can submit this, your Honor.

THE COURT: Just give me the fringes.

THE WITNESS: The base pay is $301. Payroll taxes $34 a week—

THE COURT: That is for everybody.

THE WITNESS: I have that indicated both ways. [13] I will give you a comparison. I start out—union 301; non-union 256. Payroll taxes non-union 21—union 24.

THE COURT: You don't pay that.

THE WITNESS: That is our participation in the payroll tax. That includes FICA, our contribution to social security, general payroll taxes, 8 per cent of payroll.

Pension, non-union, no money involved; union is $26 a week; holidays, my non-union people get six; union people 13, costs me $15 a week; health and welfare, non-union $15 a week; union, $40 a week.

Vacations, my non-union people are at an average of three weeks, which is $15 a week; union people five weeks, average $29 a week; personal days, non-union get none; union people get six, which costs $7 a week.

Sick days, non-union people none; union people 7; another $8 a week. What we call in general terminology in the contract as coffee and wash up time, no cost to non-union and an additional $25 a week to union people.

Then the last cost I have for both workmens comp adds $3 to non-union; $18 to union. That is 316 versus 493, union versus non-union.

[14] BY MR. KROLL:

Q With respect to the wage rate you set forth $256 wage rate you can pay your non-union people. Isn't that the starting wage rate set forth in the collective bargaining agreement?

A Starting wage rate for who?

Q Any new employee.

A I have no such agreement with non-union. 256 is just payroll for a number of people average. It has nothing to do with the bargaining agreement at all.

Q The 256 number is your payroll. What employees are placed into this.

A Taking everybody into that except management people and myself and computer people and clerical; in that group.

Q You put secretaries into that figure?

A We don't have secretaries; clericals. We have no secretaries per se.

Q With respect to the wage rate—I am confused—maybe you can help me.

The average cost of everybody in your company was 256?

A Everybody non-union.

Q If you were to have the contract rejected, you would continue paying employees the $301 rate?

A You are asking a question I don't know the answer to.

[15] Q You have not made up your mind if you are going to pay these three people or you are dropping to a lesser or even more rate?

MR. KATCHEN: The issue isn't $300. It is $200 in fringes. He made that clear earlier. This is ignoring what the testimony was.

THE COURT: I would assume, Mr. Kroll, when he gives 256, he has employees that make less and more. He was averaging them out, which he has done with the union.

I gather the three union people get 301 a week. He pays his foreman more than 300 a week. He is talking about 493 against 391.

THE WITNESS: I used the $7.52 rate. As of May 1st, 1981 that changes.

THE COURT: To what?

MR. KATCHEN: $8.35.

BY MR. KROLL:

Q That is what you are paying; you haven't given the last wage increase?

A No.

Q It was my understanding there was the difference between 256 and 301.

A No, sir.

[16] Q I stand corrected.

One item you mentioned was coffee and wash up time and you estimated that to be 25 for the three union personnel?

A Per person per week.

Q You estimate no cost to your company with respect to your non-union personnel; I take that to mean your non-union personnel don't take coffee time or wash up time?

A In a manner to continue to work. We have a built in 15 minute break and a ten minute break in the afternoon

and ten minute wash up; that is forty minutes a day. It costs me more than $5 a day. I believe I used $5 in my average.

My non-union people have a cup of coffee and continue to work.

Q That has to do with the nature of the work; is that correct?

A Not necessarily.

Q The people we are talking about are truck drivers?

MR. KATCHEN: We are getting into an argument. The union people don't work; that is all there is to it.

MR. KROLL: An union person, if he drives on the road, if he tried to drink his coffee at [17] the same time—you are comparing apples and oranges with that $25 savings.

THE COURT: Are there any other truck drivers, non-union?

THE WITNESS: It is a closed shop.

THE COURT: On truck drivers?

THE WITNESS: Yes.

THE COURT: How about warehousemen?

THE WITNESS: Everybody is union that performs a material handling function itself, whether production, warehouse work or truck driver.

THE COURT: So, if a truck driver drives to work, he can't drive and drink coffee?

THE WITNESS: That makes sense. I understand. I would give into that.

BY MR. KROLL:

Q With respect to your pension plan, the non-union employees don't have pension plans; is that correct?

A Yes.

Q When you were paying into the pension plan, that was at the 50 cent per hour rate?

A 60 or 65 cents per hour rate.

Q Let's see if I can refresh your memory. [18] 65 cents became effective May 1, 1980?

A Yes.

Q You have never payed that, though?

A I am not sure. It was May 1, 1979. If you go through that contract, you will find 60 or 65 indicated in that con-

tract. I don't know what wage—and I don't have mine in front of me.

MR. KROLL: Perhaps I could have it marked for identification.

THE COURT: D-1 for identification. (Contract, Local 408 and Bildisco, was marked as Exhibit D-1 for identification, as of this date.)

BY MR. KROLL:

Q Identify this for me, please.

A Our union contract.

Q I call your attention to page 18 of the collective bargaining agreement effective May 1, 1979; what was the rate per hour?

A 50 cents per hour.

Q That was the rate you were paying?

A My figures for the rates were gotten from the bookkeeping records. She prepares monthly the cost per employee for both health and welfare and pension, and all I did was take it right off of that. I understand what you [19] are saying.

Q There has been no pension contributions made by your company for in excess of a year; that is why we went to the NLRB; is that correct?

A That is not the reason.

MR. KATCHEN: Objection. This was previously sustained.

MR. KROLL: I will withdraw that.

Q Your company has made no welfare or pension contribution since approximately when?

MR. KATCHEN: Same objection. We are not dealing with the history of this case.

THE COURT: I think it is immaterial, is it not?

Q The third item after pension that you discussed with respect to the saving, what item was that?

A Holidays.

Q Six dollars and for your union personnel 15?

A Union versus non-union has to be number of days basically.

Q Your welfare was 40 dollars compared to 15?

A Yes, health and welfare.

Q 40 dollars per week based on what?

A Again from my bookkeeping records, average 3.33 bi-monthly contribution.

[20] Q That would average out to $160 per month?

A No. It averages out—you have to use 4.33 number, not a 4 number. My bookkeeper had it a little different way.

Q The rate called for in the collective bargaining agreement was 135 per month?

A The last rate we paid was $135 per month.

Q Non-union rate, you estimated to be $15 a week?

A Yes, sir.

Q What kind of plan do the non-union personnel have?

A That includes Blue Shield, Blue Cross and Major Medical.

Q Local 408 Health and Welfare plan is set forth in the collective bargaining agreement?

A As far as I know, yes.

Q Vacation, you estimate a difference of $15 for non-union and $29 for union personnel?

A Yes.

Q How long have the three individuals you presently employ in union positions—how long have they been employed by the company?

A Our last 16 people are all employed over 17 years.

Q The three people you presently have on your payroll?

A I believe some of them are as high as 20 years.

Q How long has Local 408 represented employees at Bildisco?

A I don't know.

[21] Q They were there before you came?

A Yes.

Q Non-union personnel receive no sick pay?

A No.

Q If a salesman is out sick, he is not paid for that day?

A The way that will take place is if it is something extended he may take vacation, or it will happen in a different manner.

There is no formal sick days, period. People are paid and it is done by our own volition. They make it up in different ways.

Q Is a salesman on salary?

MR. KATCHEN: I object. It is not covered—

THE COURT: I will permit it. He is comparing apples and peaches, I think.

Q Is a salesman on a salary basis?

A Partial salary and mostly commission basis. If he is out, he will get hurt in other ways.

Q There is less chance for him out on the road attempting to make sales; that is how he gets hurt?

A He can't see customers. That is the name of the game.

Q Let's talk about other than secretaries and salesmen; who else do you have employed there?

[22] A We have what we call an order desk which receives telephone calls which is part of the sales department. We have bookkeeping functions and part of that is computer functions.

Q Those individuals are employed on a salary basis?

A Yes.

Q If one of those individuals misses a day, do you dock them for that?

A No. I say no, and hesitantly. It is a determination of the people who manage them. They make it up in different ways. Two people came in Saturday to close the records. It is done in different ways. It is not a rigid system.

We have a right to docke them if we wish. I don't believe it is always done and I believe it's what—it is somewhat used as a reward basis and we have a good relationship with our people.

Q With respect to the sick days, how many sick days do your three union people receive?

A Eight days a piece.

Q Per year?

A Per year.

Q Your analysis was done on the basis of 8 days?

A Yes, sir—excuse me—seven days. $8 but on 7 days.

Q The final figure is one based on workmens comp. [23] The difference between the non-union, $3.00 and the union, $18.00.

A That is not, honestly speaking, whether the warehouse functions or not. That is why I added on the bottom, so to speak.

Q That $18.00, it makes no difference if it is a union man or non-union man, you are still going to pay $18.00 in workmens comp?

A Right.

Q How many personal days are the three union employees permitted per year?

A Six. You find that in two different areas, personal days, per se, and what the union contract refers to as family death days or something to that extent.

Q You are combining both personal days and if somebody had a death in the family, they can take a day or two?

A Yes. Would you like the reason why?

THE COURT: Just answer the question.

Q In the past was one of your non-union personnel taken—did one take off for a death in the family?

A I imagine they have.

Q Have they been paid their regular salary?

A The same answer as sick days. It is done on a flexible basis. Where we feel, we should, we reward. There [24] is not a set answer to it.

Q If you can recall in the past two years that you have been with the company, do you know of an incident where a non-union employee was not given—took a day off and was not compensated?

A Was not compensated?

Q AI am talking about he was docked.

A Sure, many, many times. We employed as many as 55 people; hundreds of times. Not one or ten times.

Q Out of your overall labor costs, what is the percentage of the three union individuals?

MR. KATCHEN: Objection, your honor. The forecast of $100,000 was predicated on ten. A question of limiting this to 3—

MR. KROLL: I am talking of right now.

THE COURT: There is a difference of $132 a week right now, not in slary but in fringes—fringe benefits.

By simple mathematics if you want to know what it is for three people, it is $396.

MR. KROLL: Your Honor, with all due respect to the court, I don't believe it is the exact amount of the rate: he is not paying that rate. The Welfare and pension contributions, he has estimated the highest contribution.

[25] THE COURT: Under the contract this is what he should be paying and from what I have heard and I shouldn't have heard, this is what your suit is before the NLRB.

MR. KROLL: That complaint is already issued. It is not a charge. It has been issued against them.

THE COURT: Maybe somebody should move to restrain the suit.

MR. KATCHEN: Since we are off on a tangent, we are considering an application to retain special labor counsel.

MR. KROLL: That is all the questions we have, your Honor. We move that the collective bargaining agreement be placed in evidence.

THE COURT: Any objection?

MR. KATCHEN: No objection.

THE COURT: D-1 in evidence.

(Exhibit D-1 for identification was received in evidence, as of this date.)

MR. KATCHEN: Can you give me one second, please?

(A short recess was held at this time.)

THE COURT: All right.

Back on the record. Mr. Katchen?

[26]

REDIRECT EXAMINATION BY MR. KATCHEN:

Q Your company operates what is known as a closed shop?

A Yes.

Q If this union contract is not terminated, what is the effect as you understand the union contract, and its operation, to be for a closed shop if you wanted to employ someone not a union member?

A I couldn't do it as a warehouse or trucking function.

Q Unless you paid the union contract rates?

A Being somewhat ignorant, it is not only the rate, but they must be a member of the union.

MR. KATCHEN: No other questions.

RECROSS EXAMINATION BY MR. KROLL:

Q To clarify the record, you are talking about the union security clause in the contract?

A I am talking about 30 days they must be a member of the union.

Q They must pay dues and initiation fees to the union?

A And be a member of the union.

Q That is not a closed shop. You have a union security clause in your contract whereby it says after 30 days [27] they must pay.

A I don't know the definition. You have to be a union member.

THE COURT: You don'thave to be a union member to be employed?

THE WITNESS: NO.

THE COURT: But you must become a member of the union?

THE WITNESS: That is right.

MR. KROLL: No further questions.

MR. KATCHEN: That is all we have.

I believe—I submit that 365 indicates clearly without exception any executory contract for cause can be terminated, and the cause in the case is at the present time we forecast coming out of court in a reorganization plan to pay 25 percent over a period of four years, over an annual forecast of 12 months if the union; contract is not rejected, we anticipated having to pay at least $150 a week more per person than we would otherwise have to pay.

If the forecast is employing ten people a week, covered by those rates, we are talking about $1500 a week. The forecast was approximately $2000 a week because he forecast more extra cost based on May 1, 1981.

[28] On that basis I am talking about cost of $100,000 a year. Call it $50,000 a year or $100,000 a year; it is simply

that amount of money to be saved to assist this debtor, and that is what 365 requires, that it be a termination for cause.

It is not a case of equal benefits by retaining the contract versus rejecting the contract. The evidence is all one way.

There is no benefit to commensurate with rejection—excuse me—no benefit commensurate with refusing rejection.

We can get substitute people; we can employ them. As a matter of fact—I withdraw that.

I will conclude by saying that unlike the legal principles that were created by the courts before the adoption of the Bankruptcy Reform Act, there seems to me to be no special class of executory contract. It is a lease or executory contract. There is no new species for labor contracts. They are in the same class as any other.

If the benefit from rejection outweighs the deteriment, than the balance of equity should [29] allow the debtor the perogative to reject for cause shown, and I think this we have shown.

Thank you.

THE COURT: Mr. Kroll?

MR. KROLL: I would like to pick up on the tail end of counsel's statement that there are no special classifications of executory contracts.

In fact, there are court decisions involving labor contracts. I am talking about collective—

MR. KATCHEN: I am talking about—I said before 1979. After 1979 Congress made no distinction. I misspoke, but that is what I intended to say.

MR. KROLL: It is a very unique type of executory contract.

You have decisions in the Allanwood case and Penn Fruit Company, both out of the Eastern District of Pennsylvania.

I think the findings have been to set aside a collective bargaining agreement, the Court must determine that the collective bargaining agreement is so burdensome or [30] onerous, to make it impossible the successful rehabilitation of the debtor.

It is not enough that the debtor feels that the contract is a financial hardship to him.

In addition, your Honor, to make that determination, you must also weigh the equities between the debtor and the employees of the company. The decision to allow rejection should not be based solely on whether it will improve the financial status of the debtor.

There is a balance of equity in the two-step test. Here employees are employed in excess of twenty years. They have pension rights, seniority rights, and what the debtor in possession is asking the court to do is throw those rights out the window.

Again I repeat, the court must determine that the collective bargaining agreement is so burdensome as to make impossible the successful rehabilitation of the debtor, and there has been no evidence to indicate that, your Honor.

MR. KATCHEN: The cases Mr. Kroll cited—

[31] THE COURT: I know, Mr. Katchen, that he is citing cases prior to the Code, and I must agree with Mr. Kroll completely.

In the Allanwood case and the Food Fair case this is what the U.S. District Court for the Eastern District of Pennsylvania, as well as Judge Goldhaber in the Bankruptcy Court decided.

365-A of the Bankruptcy Code says that a trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor, and 365-D-2 in a case under Chapter 9, a trustee may reject or assume at any time before confirmation of the plan.

I don't know why Congress wrote 365(a) and (B) in such simplistic language. I would assume a good reason for rejecting the contract or the court approving rejection is the fact that debtor appearently feels he can do without the union contract and save, according to the testimony—undisputed testimony—assuming there are ten employees and assuming it is May 1, 1981 figures, it is approximately $100,000 a year.

[32] Now if that isn't a good reason for the debtor coming in and saying I want to reject the contract, I don't know what would be a good reason.

Now the union and the employees have a right to claim damages as a result of the rejection of the contract. They

can file a complaint for the purpose of having damages fixed, and I suppose they will have—there will have to be a trial on the damages to ascertain what the damages might be.

MR. KATCHEN: Subject to the maximum in 502. An employment contract has a one year cap on it.

I am sorry to interrupt, but all the history about the bankruptcy reform act that can be found, that I have been able to find, does not discuss the old cases, not only from this circuit but any circuit.

Apparently when Congress wrote 365 it did so without exception. That is my point.

You say simplistic terms; well it may be that Congress was very deliberate. They didn't want to make exceptions.

Each case is to be decided on its own [33] merits, no special class for union contracts. Each case was to be decided on its own.

The union has no higher dignity in this court and no court except the NLRB. It has no special status. It is like anyone else.

If they cost the debtor that much more, Congress is definite in saying that is an impact that the debtor should avoid; so the debtor should survive, and that is what this is all about.

THE COURT: As to the legislative history, the record should indicate that the court should permit termination, but should compensate, and of course it is up to, in this case, the union, to file a complaint.

I believe that the reason for the approval is not so much in the case of rejection, but in the case of acceptance of an executory contract, or an order to accept an executory contract, or assume an executory contract, the debtor must make the other contracted party whole.

I don't know under the Code what power the court has to disapprove an application to [34] reject a contract, unless it can be shown it was a promiscuous act on the part of the debtor, and it was really a beneficial contract.

It is surely not a beneficial contract if it costs him $132 a week, which is my own computation, more than he would have to pay if he didn't have the contract.

Under the circumstances I am going to have to allow the motion of the debtor.

How much time are you going to need to file a complaint for damages?

MR. KROLL: I have to review. We have requested an audit of the records to ascertain how many people were employed in the payroll. To date we have not heard anything.

As soon as we can get an audit done, as to what people were working and when, then I can file the complaint.

THE COURT: Sixty days?

MR. KROLL: As long as the employer is willing—we have to have an audit of the books.

THE COURT: How long do you need to audit the books?

[35] THE WITNESS: With reference to what?

THE COURT: How many people have been on the payroll.

THE WITNESS: This is news to me.

MR. KROLL: By December 5th a letter was forwarded to you.

THE WITNESS: I will check into it. It is an easy thing. I am sorry.

Your Honor, in this NLRB thing we never had representation. We needed permission of the court. Upon to this point we haven't sought this permission. We haven't been able to answer any of the things. I apologize.

MR. KROLL: I am talking about the letter that the union sent to you.

THE WITNESS: Mr. Malofsky said it had to do with the same thing.

MR. KATCHEN: I will answer in less than a week for counsel the present payroll roster showing hours employed since the Chapter 11 was filed for everyone in the union contract.

I will do it within a week.

THE COURT: 30 days?

MR. KROLL: That is sufficient.

Just for the record, your Honor, with [36] respect to the ruling today, it is your position, your Honor—and correct me if I am wrong—the case prior to the enactment of the Bankruptcy Code, those cases dealing with special consid-

erations given collective bargaining are no longer applicable?

MR. KATCHEN: I don't think you should ask the basis.

Your Honor said the testimony is undisputed. We show a one-way benefit. If counsel thinks there is error, he can pursue it. I don't think there is any provision to conduct discovery of the court.

THE COURT: All I am saying is this is not a case under the Bankruptcy Act; it is under the Bankruptcy Code.

Under Section 365 I have to grant the motion to reject.

MR. KROLL: Thank you, your Honor. I didn't mean any insult to the bench.

THE COURT: Motion of debtor to reject the May 1, 1979 labor contract of Teamsters Union Local 408 allowed and the union is allowed 30 days from the date of the order within which to file a claim for damages.

[37] MR. KATCHEN: I will submit an order, your Honor.

THE COURT: Thank you, gentlemen.

(The witness was excused at this time.)

* * *

I hereby certify that the within is a true and accurate transcript of the said proceedings.

/s/
BERNICE STIMMEL, CSR

BUILDING MATERIALS, HEAVY, HIGHWAY, AND CONSTRUCTION INDUSTRY DRIVERS, HELPERS, AND WAREHOUSEMEN

TEAMSTERS UNION LOCAL NO. 408
1907 Morris Avenue, Union, New Jersey 07083

AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFUERS, WAREHOUSEMEN, AND HELPERS OF AMERICA

THIS LABOR CONTRACT entered into between ARTHUR GERSHON & MRS. RUTH PERLMUTTER t/c BILDISCO, having its or his place of business at P.O. Box B, Rahway, New Jersey, and elsewhere, hereinafter referred to as the "Employer", and TEAMSTERS UNION LOCAL NO. 408, hereinafter referred to as the "Union", this 1st day of MAY 1979.

WHEREAS, the Union is the authorized and recognized exclusive collective bargaining agent for all employees of the Employer designated in Section 2-a below in respect to wages, rates of pay, hours of employment, and other conditions of employment.

WITNESSETH: that for the purpose of mutual understanding and in order that a harmonious relationship may exist between the Employer(s) and the employee(s) in the driver and warehouse industry, to the end that continuous and efficient service will be rendered to the mutual benefit of the parties hereto. Now, therefore, it is hereby agreed by and between the parties hereto as follows:

SECTION 1

(a) That this contract shall govern all wages, hours, and working conditions as set forth herein for the employees listed according to their job classification in Section 2–a.

(b) The Employer shall not enter into any other written or oral agreement with any employee or group of employees covered by this agreement which in any way violates

the wages, hours, or working conditions of this contract. In the event any such agreement is entered into with the consent of any employee or group of employees, the Union reserves the right to issue a work stoppage and order shall not be considered as a breach of this labor contract.

SECTION 2

(a) JOB CLASSIFICATIONS...

WAGES PER HOUR::eli	MONDAY TO FRIDAY...	EFFECTIVE	
Straight Truck Driver	$7.52	$7.98	$8.37
Warehousemen	7.52	7.97	8.37
Mechanics "A"	7.52	7.97	8.37
Outside Field Service Men	7.52	7.97	8.37
Order Pickers	7.00	7.45	7.85
Mechanics "B"	7.30	7.75	8.15
Working Foreman	7.82	8.27	8.67
Helper	6.46	6.91	7.31*

*HELPER ON PAYROLL MAY 1, 1979, SHALL, UPON COMPLETION OF SIX (6) MONTHS SERVICE RECEIVE AN INCREASE TO SAID RATE.

(b) CLASSIFICATION	Starting Rate	After Prob. Period	After 6 Months
Straight Truck Driver	$6.72	$7.09	$7.52
Warehousemen	6.72	7.09	7.52
Mechanic "A"	6.72	7.09	7.52
Mechanic "B"	6.72	7.09	7.52
Order Picker	6.20	6.57	7.00
Helper	5.66	6.03	6.46

The shop steward or acting shop steward shall receive the sum of fifteen cents (15¢) per hour in addition to his regular rate of pay. Overtime per hour shall be increased accordingly.

(d) Whenever a dispute arises about the wages of an employee, the business agent of the Union shall have the right to inspect the Employer's payroll or time card records of the employee.

(e) Except to the extent that specific provisions have been made in this agreement concerning working hours, rates of pay, and terms and conditions of employment, it is

hereby understood and agreed that if there are any existing conditions such as rest periods, wash-up time, and assignment or work that is more favorable than are called for in the contract, the same shall be continued as herefore.

(f) Employees covered by this agreement receiving more than the wages set forth, more advantageous hours, bonus, or working conditions shall suffer no reduction in pay or loss of any of the benefits derived from those hours, bonus, or working conditions by virtue of this contract.

SECTION 3

(a) Eight (8) consecutive hours, exclusive of the lunch hour, shall constitute a regular day's work for all employees covered by this contract, Monday to Friday, inclusive. All time worked by employees in excess of the eight (8) hours each day, Monday to Friday, inclusive, shall be paid for on the basis of time and one-half (1½) the rate per hour listed in Section 2–a, according to the employee's job classification.

(b) Employees assigned to work each day Monday to Friday, inclusive, shall be guaranteed a minimum of eight (8) hours work or shall be paid for same by the Employer.

(c) All Saturday work (if not a holiday) shall be paid for at the rate of time and one-half (1½). Employees assigned to work on Saturday (if not a holiday) shall be guaranteed a minimum of five (5) hours and twenty (20) minutes work at time and one-half (1½). or shall be paid for same by the Employer.

(d) Employees assigned to work on a Saturday that is a holiday shall be paid for all work at triple straight time and shall be guaranteed a minimum of five (5) hours and twenty (20) minutes work or shall be paid for same by the Employer.

(e) Employees who are assigned to start work any day Monday to Saturday (if that Saturday is not a holiday) inclusive, by the Employer or the Employer's representative(s), but are not placed to work, shall nonetheless be paid a day's pay. When employees are assigned to start work on a Sunday or any of the holidays named in this

agreement by the Employer, but are not placed to work, that employee shall be paid two (2) day's pay.

(f) STARTING TIME: a regular day's work for employees shall be from 7:00 a.m. to 8:00 a.m., starting time to be computed from the time of the employees starting to work at the Employer's place of business to leaving same. Time clocks shall be used to record employee's working time.

(g) Where employees are required to report for work before 7:00 a.m., they shall be paid for such period at the overtime rate. Where employees are required to report for work at 8:00 a.m., or any time thereafter until 4:00 p.m., the starting time shall be as of 8:00 a.m., and they shall be guaranteed a minimum of eight (8) hours work or shall be paid for same.

(h) NIGHT WORK: employees who are assigned to night work shall be paid seventeen and one-half cents (17½¢) per hour in addition to the wage per day, in accordance with Section 2-a. The overtime per hour shall be increased accordingly. The night shift shall start between 2:00 p.m. and 4:00 p.m.

(i) Any employee who will be absent from work for any reason shall call the Employer prior to the starting time of the day that he will be absent or the evening before. Disputes arising over this paragraph shall be referred to the Local Union, pending the decision of the Local Union.

SECTION 4
Lunch Period

(a) One (1) hour or one-half (½) hour shall be the full lunch time for all employees, which period shall start not before 11:30 a.m., nor later than 12:30 p.m.

(b) On night work, the dinner hour for all employees shall be taken and completed between the 4th and 5th hours after the employee has commenced work.

(c) Employees who are ordered to work during part of their full lunch time shall be paid for the full lunch time at the overtime rate applying to that day. Employees who are ordered to work through their full lunch time shall be granted fifteen (15) minutes to eat lunch and such time shall be credited as time worked.

(d) Employees who start work on a regular day's work after 12:00 Noon shall not receive any lunch period.

(e) All employees shall be granted fifteen (15) minutes coffee period in the morning hours of each day; and ten (10) minutes coffee period in the afternoon hours.

(f) Employees shall be granted five (5) minutes wash-up time before lunch,and also at the end of the shift, and shall be paid for same by the company.

(g) Any employee directed by the supervisor to work one (1) hour or more overtime, in any one day, shall be entitled to one-half (½) hour paid lunch period; any employee directed to work less than one (1) hour overtime after 6:00 p.m., shall be entitled to a fifteen (15) minute paid lunch period.

SECTION 5
Duties of Employees

(a) Drivers may be required to assist in loading and unloading other vehicles in addition to those they drive; to drive one or more trucks during their working day; to make pick-ups and deliveries; to make inside deliveries, except that they shall not be held responsible for losses occurring in making inside deliveries. He may also be required to perform warehouse work.

(b) The Employer shall be the sole judge in determining whether or not helpers should be assigned to trucks or to their equipment.

(c) Motorized lift truck operators shall operate lift trucks at the Employer's place of business. He may also be required to perform warehouse work.

(d) Warehousemen's duties shall consist of the handling and checking of all freight in the warehouse of the Employer, and the loading and unloading of freight cars, and the loading and unloading of freight on and off vehicles, and operate motorized lift trucks. Warehousemen must, in an emergency, drive trucks.

(e) The Employer agrees that the delivering and/or picking up directly connected with the trucking and shipping operation shall be performed only by the employees governed by this agreement.

(f) The Employer agrees that all handling, assembling, checking, loading, and unloading of the Employer's freight (part materials, etc.) finished products in, on, or about the Employer's place of business shall be performed by only those employees employed by the Employer who are governed by this agreement.

(g) Employees shall not be deprived of earning opportunity due to the Employee hiring or contracting for outside help.

(h) The Employer will respect the jurisdictional rules of the Union and shall not direct or require their employees or other persons other than the employer in the bargaining unit here involved to perform work which is recognized as the work of the employees in said unit.

(i) Supervisory personnel of the Employer shall be restricted from performing the work which is recognized as the work of the employees covered by this agreement.

(j) Employees shall not operate unsafe vehicles, i.e., vehicles on which the brakes, horn, steering apparatus, lights, directional signals, windshield wipers, etc., are not in proper working order as required by the State Motor Vehicle Laws and the I.C.C. Rules and Safety Regulations. Employees shall not be held responsible for vehicles not properly equipped to comply with the State Motor Vehicle Laws and I.C.C. Rules and Safety Regulations and shall be compensated for fines, traveling expense, and time lost if summoned to court etc., because of same.

(k) Drivers to use utmost care at all times to prevent loss of materials. Where loss of freight occurs through the negligence of the driver, he shall be held responsible for same where it is proven that said loss occurred through his negligence or carelessness. Disputes arising over this paragraph shall be referred to the Local Union, pending the decision of the Local Union.

SECTION 6
Seniority

(a) Seniority according to all job classifications shall prevail at all times.

(b) There shall be one seniority list consisting of the regular payroll record, subject to the approval of the Union.

(c) Employees shall be ranked in seniority, according to their length of service with the Employer in all classifications of work to which they are assigned.

(d) There shall be seniority lists for all classifications of work as follows:

1. STRAIGHT TRUCK DRIVERS, WAREHOUSEMEN, MECHANICS, OUTSIDE FIELD SERVICE MEN, and HELPERS who shall be on one seniority list and referred to as such.
2. WORKING FOREMEN who shall be on one seniority list and referred to as such.

(e) All work shall be allocated to employees in strict conformity with such seniority list and the employees with the most seniority shall be assigned to work at the first job allocated that day, and the next senior employee shall be assigned to the second job allocated that day, etc.

(f) Employees on the seniority list shall apear for work at the time designated by the Employer. Employees failing to appear at the time shall forfeit their place on the seniority list for that day and shall not be placed to work until all other employees who appeared at the time designated by the Employer have been placed to work in seniority order. Employeees who were booked to work, but appeared late, shall also be placed at the bottom of the list for that day.

(g) New employees shall be placed at the bottom of the existing seniority list after the completion of their first day's work.

(h) Any employee who is absent through sickness or injury shall receive his regular seniority upon returning to work, providing the Employer and the Union have been notified of said sickness or injury within seventy-two (72) hours after the employee has taken sick or is injured.

(i) The Employer shall grant employees a leave of absence without loss of seniority, upon the request of the Union only.

(j) Any employee entering military service in any branch of the United States Government shall resume seniority with the Employer when discharged from such service. He shall not suffer any loss of seniority.

(k) Employees on the seniority list who fail to report for work in person for three (3) consecutive working days shall forfeit their place on the seniority list and shall be placed behind the junior employee on the seniority list upon their return to work.

(l) Employees who are laid off from the employ of the Employer because of lack of work shall be listed in the employment records of the Employer for a period of one (1) year after being laid off, and in the event the services of those employees are required by the Employer during said one (1) year, the Employer shall notify such employee in seniority order, in writing by certified mail, addresssed to their last known address to return to work. The Employer must notify the Local Union also of the above. Employees so notified shall return to work within three (3) days from the date such notification was mailed.

(m) Seniority shall be broken only by:

1. VOLUNTARY QUIT.
2. FAILURE TO RESPOND TO A NOTICE OF RECALL AS SPECIFIED IN SECTION 6-L OF THIS ARTICLE FOR REGULAR WORK THREE (3) CONSECUTIVE DAYS AFTER NOTIFICATION WAS MAILED.
3. UNAUTHORIZED LEAVE OF ABSENCE.
4. UNAUTHORIZED FAILURE TO REPORT FOR WORK FOR THREE (3) CONSECUTIVE DAYS WHEN WORKING AND ON THE SENIORITY LIST.

(n) Any employee who is absent because of proven illness or injury shall maintain his seniority. Employees shall continue to pay their union dues while absent because of sickness or injury.

SECTION 7
Holidays

(a) All employees who are assigned to work on Sunday or the following holidays shall be paid double a regular day's pay, sixteen (16) straight time hours

NEW YEARS DAY
WASHINGTONS BIRTHDAY
LINCOLNS BIRTHDAY

DECORATION DAY
GOOD FRIDAY
LABOR DAY
INDEPENDENCE DAY
NOVEMBER ELECTION DAY
THANKSGIVING DAY
DAY AFTER THANKSGIVING
CHRISTMAS DAY
EMPLOYEES BIRTHDAY
MARTIN LUTHER KINGS BIRTHDAY (Jan. 15th)

Overtime work on the above days shall be paid for at double the overtime rates in accordance with Section 2-a.

(b) Employees who are not assigned to work on any of the above holidays shall nonetheless receive a regular day's pay, eight (8) straight time hours, for the holiday providing the employee has been assigned to work any one (1) day of the calendar week during which the holiday occurs. Extra men to work any two (2) days of the calendar week. An employee who has worked two (2) days or more on a higher classification shall be paid for the holiday at the higher base rate, if such classification rate differential prevails.

Paragraph (a) of this section does not apply when the holiday occurs on a Saturday. Paragraph (b) of this section shall apply when the holiday occurs on a Saturday.

(c) If any of the above listed holidays occur in a calendar week during which an employee is on vacation, the employee on vacation shall be paid for a day's pay, eight (8) straight time hours, in addition to his vacation pay for said holiday.

(d) When any of the holidays occur on Sunday and such holiday is celebrated any day before or after the holiday Sunday, all such days shall be considered as the holiday.

(e) Holiday pay shall include the night shift differential for employees who are assigned to work the night shift any one (1) day of the calendar week during which the holiday occurs.

SECTION 8

All cases of temporary transfer from or within a section shall be by classification seniority. Any employee who re-

ceives a higher rate and is transferred by company temporarily to work on a job that pays a lower arate, shall continue to receive the higher rate and will have the same rights and privileges to all increased in his old classification. Any employee who receives a lower rate and is transferred by company temporarily to work on a job that pays a higher rate shall receive the higher rate for the day.

SECTION 9

It is recognized that the customary functions of management, including the right to make such reasonable rules and regulations as the company considers necessary or advisable for the ordinary and efficient conduct of it's business, are expressly reserved to the company and except to the extent that there is no provision in this agreement spelling out or limiting the company, the usual rights of management to manage it's plant and warehouses, and direct the working force, are expressly reserved to the company.

SECTION 10

(a) All employees working in the warehouse, when the work load requires overtime, the employees in that job classification who are requested to work, must work up to two (2) hours overtime on a normal working day, Monday to Friday, inclusive. Notification of the need to work overtime should be given to the employee eight (8) hours before quitting time.

(b) When there is a job opening for truck driver, it shall be posted on a bulletin board for two (2) days. Employees may apply for same and the most senior employee shall be assigned the job provided he has the qualifications to handle the job. The final determination shall rest with the company.

SECTION 11
Separation Pay

(a) Employees who have three or more years of continuous service shall be entitled to a separation allowance when (1) they are permanently dropped from service because of a reduction in the work force arising out of the company go-

ing out of business or, (2) moving it's operations to another location beyond fifty (50) miles of it's present location.

(b) Employees shall not be entitled to a separation allowance where (1) they have less than three (3) years continuous service, or (2) they are laid off as a result of reduction in the work force, except as provided in section (a) above; or (3) they are discharged for just cause; or (4) they voluntarily resign or quit, (5) in all other cases, they do not come within coverage of section (a).

(c) The separation allowance shall be computed on the basis of forty (40) hours per week at the employee's regular straight time hourly rate.

(d) Each employee who at the time of the separation has completed three (3) years of service shall receive one (1) week of separation pay; and for those over three (3) years shall receive an additional one (1) week for each additional two (2) years of service to a maximum of six (6) weeks of separation pay.

SECTION 12
Leave of absence

(a) The Employer agrees to grant the necessary time off without discrimination or loss of seniority rights and without pay to any employee designated by the Union to attend a labor convention or service in any capacity or other official Union business provided forty-eight (48) hours written notice is given to the Employer by the Union specifying length of time off. The Union agrees that in making its request for time off for Union activities, due consideration shall be given to the number of men affected in order that there shall be no disruption of the Employer's operations due to lack of available employees.

(b) Any employee desiring leave of absence from his employment shall secure written permission from the Union. The maximum leave of absence shall be for thirty (30) days and may be extended for like periods. Permission for same must be secured from the Union. During the period of absence, the employee shall not engage in gainful employment. Failure to comply with this provision shall result in the complete loss of seniority rights for the employees involved. Inability to work because of proven illness or injury

shall not result in the loss of seniority rights. An employee at the time of termination or leave of absence can no longer be included in the group coverage of Teamsters Union Local No. 408 Welfare Fund. If an employee wishes to continue to have the same coverages after being terminated, the employee must nofify the individual insurance companies and make a request to be billed as an individual subscriber.

SECTION 13
Check Off

(a) The Employer shall deduct from the employee's wages on the first pay day of each month regular monthly membership dues as prescribed by the Local Union and approved by the Union. The Employer shall also be authorized and requested to deduct from the employee's wages, Union initiation fee in the amount set by the Local Union. Sums so deducted shall be remitted by the Employer to the Local Union together with a list of the names and addresses of the employee(s) from whom dues payments were deducted. This provision shall apply only after the employee(s) have presented signed cards authorizing the Employer to make deductions from their wages. This authorization and assignment shall remain in effect until revoked by the employee and shall be irrevocable for a period of one (1) year from the date of such authorization and assignment or until the termination date of any applicable collective bargaining agreement, whichever shall occur sooner. Unless the employee revokes it by sending written notice to the Employer and the Local Union, only during a period of fifteen (15) days immediately preceeding the termination date of any applicable collective bargaining agreement or yearly period, it shall be automatically renewed as an irrevocable authorization and assignment for successive periods of one (1) year, or until the termination date of the then applicable bargaining agreement, whichever shall be shorter, until duly revoked by the employee as herein provided.

(b) It is agreed between the company and the Union that should the company fail to comply with the terms of this section, the Union shall have the right to order a work stoppage and such a work stoppage shall not be a violation of this agreement.

SECTION 14
O.S.H.A.

If the Federal Law (O.S.H.A.) Federal Safety Act, or any State law requires employees to wear any hard hats, safety shoes, or any other safety equipment, it shall be supplied by the Employer, at no cost to the employee, as a first issue and thereafter with fair wear and tear excepted for replacement.

SECTION 15
Time Clocks

(a) All records of employees time worked shall be computed on time cards. Employees shall "punch in" their own time card at the start of the day's work and "punch out" their own time card at the completion of the day's work at the Employer's place of business.

(b) In the event any employee suffers loss of earning opportunity due to error or fault of the Employer because of any violation of this agreement, by the Employer or his representative, said employee shall be reimbursed in full for the earning opportunity lost. Earning opportunity shall mean and include a day's pay and holiday earnings.

(c) Employees who are injured during working hours shall be paid for the entire day provided the injury required immediate medical examination or treatment.

SECTION 16
Garnishment

An employee shall not be suspended or discharged because of any garnishment proceedings executed against his wages. However, if an employee does not pay the garnishment within the time specified by Federal and State law, disputes arising over this paragraph shall be referred to the Local Union, pending the decision of the Local Union.

SECTION 17

The Employer shall not require as a condition of employment that an employee purchase truck, tractor and/or tractor and trailer or other vehicular equipment or that an employee purchase or assume any proprietary interest or other obligation in the business.

SECTION 18
Separation of Employment

Upon discharge, the Employer shall pay all money due to the employee. Upon quitting, the Employer shall pay all money due to the employee on the pay day in the week following such quitting. Earned vacation time shall be included in such payment.

SECTION 19

The Employer shall not employ as new employees any person who has a full time job elsewhere.

SECTION 20
Picketing Clause

(a) It shall not be a violation of this agreement and it shall not be cause for discharge or disciplinary action in the event an employee refuses to enter upon any property involved in a labor dispute or refuses to go through or work behind any primary picket line, including the primary picket lines of unions party to this agreement, and including the primary picket lines at the Employer's place or places of business.

(b) The foregoing shall be operative only to the extent permitted by law. Nothing herein contained shall be construed to be a contract or agreement, express or implied, which in any manner violates any Federal or State law as presently enacted or as amended or interpreted during the term of this contract.

(c) In the event, however, to the extent that this section shall be determined by a court of competent jurisdcition in any manner to violate Federal or State law, as presently enacted or as amended or interpreted during the term of this contract, this section shall be inoperative, unenforceable and void.

SECTION 21

This agreement shall be binding upon the parties hereto, their successors, administrators, executors, and assigns. In the event an entire operation or any part hereof is sold, leased, transferred, or taken over by sale, transfer, lease,

assignment, receivership, or bankruptcy proceedings, such operation shall continue to be subject to the terms and conditions of this agreement for the life thereof. The specific provisions of this contract, excluding supplements or other conditions shall prevail. It is understood by this section that the parties hereto shall not use leasing device to a third party to evade this agreement. The Employer shall give notice of this existence of this agreement to any purchaser, transferee, leasee, assignee, etc., of the operation covered by this agreement, or any part hereof. Such notice shall be in writing with a copy to the Union at the time the seller, transferee, or leasee executes a contract or transaction as herein described. The Union shall also be advised of the exact nature of the transaction, not including financial details. In the event the Employer fails to require the purchaser, transferee, or leasee to assume the obligations on this contract, the Employer, including all partners thereof, shall be liable to the Union and to the employees covered for all damages sustained as a result of such failure to require assumption of the terms of this contract, but shall not be liable after the purchaser, transferree, or leasee has agreed to assume the obligations of this contract.

SECTION 22
Arbitration

(a) Should any dispute arise between the Employer and the employees, or the Employer and the Union concerning the application or interpretation of any provision of this contract, or concerning any term or condition of employment, or otherwise, the representatives of the Union and the representatives of the Employer shall attempt to adjust the controversy between themselves. In the event they are unable to adjust same, the dispute may, within two (2) days after the request of either party, be submitted to arbitration before a permanent arbitrator, to be designated by mutual agreement of the parties to this agreement. The term of the permanent arbitrator shall be for the duration of this agreement.

Until such time as a permanent arbitrator is selected by the parties, the dispute may continue to be submitted to

the New Jersey State Board of Mediation, whose decision shall be final and binding upon both parties.

If the Union decides to submit the matter to arbitration, it shall notify the company of this decision. The arbitrator shall be selected by the New Jersey State Board of Mediation, the decision of the arbitrator shall be final and binding on both parties to this agreement, as well as the employee(s) involved. The arbitrator shall be bound by this agreement and shall have no power to alter, amend, modify, add anything to, or take anything away from its provisions.

The dispute referred to herein shall include but shall not be limited to disputes concerning the discharge of an employee. The discharged employee shall have the right to be present at the proceedings. There shall be no recourse to arbitration where an employee has received prior warnings or disciplinary action, except where the Union determines that arbitration is warranted. This decision rests in the sole discretion of the Union and said decision shall be final and binding on all parties.

(b) The ONLY cause for immediate discharge or suspension of an employee shall be as follows:

1. PROVEN THEFT OF MONEY, GOODS OR MERCHANDISE DURING WORKING HOURS.
2. PROVEN DRUNKENNESS OR PROOF OF BEING UNDER THE INFLUENCE OF LIQUOR DURING WORKING HOURS.
3. CALLING AN UNAUTHORIZED STRIKE OR WALK-OUT.
4. ASSAULT ON THE EMPLOYER OR HIS REPRESENTATIVE DURING WORKING HOURS.
5. DIRECT REFUSAL TO OBEY ORDERS OF THE EMPLOYER WHICH ARE NOT A VIOLATION OF THIS LABOR CONTRACT.
6. FAILURE TO REPORT AN ACCIDENT WHICH THE EMPLOYEE WOULD BE NORMALLY AWARE OF.
7. THEFT OF TIME SHALL NOT BE A CAUSE FOR IMMEDIATE DISCHARGE. IT IS RECOGNIZED AS AN OFFENSE FOR WHICH SEVERE DISCIPLINARY MEASURE MAY BE INVOKED.

When an employee is discharged, the company shall notify the Union in writing.

(c) If, upon hearing before the arbitrator, or Employer and the Union, it is established that any of the employees are found guilty of any of the above offenses, the discharge of the employee for the above offenses may be sustained by the arbitrator.

(d) Prior to a hearing and decision by the arbitrator, the employees shall not be suspended or discharged except for offenses named above.

(e) The arbitrator shall be free, if in his discretion he deems it desirable to do so, to attempt to adjust any differences or dispute by mediation before or during the course of any arbitration.

(f) The arbitrator shall be under no necessity of taking an oath or of following any strict rules or methods of procedure, except that the arbitration hearing shall take place within one (1) week after being submitted to the arbitrator, and the arbitrator must render a decision on the dispute not later than two (2) weeks after the hearing on the dispute is concluded.

(g) A discharged employee must notify his Local Union in writing, within two (2) working days of his desire to appeal the discharge.

SECTION 23
Reports

Any employee involved in any accident shall immediately report to the Employer said accident and any physical injury sustained. When required by his Employer, the employee before going off duty and before starting his next shift, shall make out an accident report, in writing, on forms furnished by the Employer, and shall turn in all available names and addresses of witnesses to the accident. Such reports shall be made on company time. Failure to comply with this provision shall subject the employee to disciplinary action by the Employer and the Union.

SECTION 24

(a) All deliveries and pick-ups of the Employer's materials shall be performed by the employees covered by this

agreement and no outside trucks shall be hired unless all employees are working.

(b) The Employer shall not discontinue pick-up or delivery of material with his trucks without approval of the Union. Should the Employer discontinue using his trucks, the Employer must arrange for his employees to be employed by whomever does the pick-up or delivery of said merchandise at the wages and terms of this agreement.

(c) The Employer shall not hire any trucks unless all employees governed by this agreement and available for work on the Employer's seniority list are working.

The above provisions shall not restrict customers in the usual course of business as to the manner they pick-up merchandise purchased from the Employer. These provisions shall likewise not restrict the pick-up and delivery of merchandise by over-the-road operators in the usual course of business.

SECTION 25

If the employees are hired through an employment agency, the Employer is to pay the employment agency fee. Employees must be paid the prevailing wages, within the classification under the labor contract.

SECTION 26

(a) The Employer shall not establish or create a so-called "black list", nor in any way become a party to the establishing of such a "black list", that may have for its purpose the prevention of any member of the Union obtaining employment with any other Employer or company.

(b) The Employer shall not discriminate against any member of the Union who is employed by the Employer or seeking employment with the Employer because of such member's race, color, creed, nationality, or Union activities.

(c) Representatives of the Union shall be permitted at all times to enter upon the Employer's premises for the purpose of conducting the affairs of the Union in connection with any and all grievances or disputes which may arise between the Union and the Employer, or the Employer and the employee(s).

(d) The Employer shall permit representatives of the Union to post notices pertaining to Union affairs, etc., in the Employer's place of business on a bulletin board placed at a conspicious location. The bulletin board is to be supplied by the Employer.

SECTION 27
House Concerns

Where the Employer acquires or has acquired the work or trucks of any so-called house concern whose employees are being organized or are already organized, the employees of said concern shall be confined exclusively to the work they performed while in the employ of said concern. These employees shall hold seniority on the work of said concern as if they were actually employed by said concern, in addition to maintaining seniority standing on the Employer's seniority list from the day such employees started to work on the Employer's payroll. If, however, there is no work for said employees on the house concern's work, the said employees shall work in their proper seniority as of the date of hire by the Employer on the Employer's work and shall be governed by the terms of this agreement. Past practices shall prevail as to when house concern employees may exercise their company-earned seniority on jobs other than their house concern job.

SECTION 28
Safeguards

The Employer shall furnish employee(s) with all necessary safeguards when the employee(s) handle materials that may be injurious to health or safety. If the Employer does not furnish the employee(s) with such safeguards, the employee(s) shall have the right to refuse to handle such materials and disputes arising over this paragraph shall be referred to the Local Union, but pending the decision of the Local Union.

SECTION 29

The Employer shall protect employee(s) with Workman's Compensation Insurance, Social Security, and Unemployment Insurance as required by Federal and State laws.

SECTION 30
Overloads

Employees shall not be held responsible for overloaded vehicles. Whenever a driver is penalized because of such overload, the Employer shall bear all cost in connection with such overload penalty, and shall pay damages assessed against the employee, including accrued overtime, for delay and/or any lost earning opportunity that the employee might suffer. In the event the employee shall suffer a revocation of his chauffeurs' license because of a violation of any laws by the Employer, the Employer shall provide suitable and continued employment for such employee at no less than his regular earnings at the time of revocation of license, for the entire period of revocation of license, and the employee shall be reinstated in the seniority he held prior to revocation of his driver's license, after his driver's license is restored.

SECTION 31

Should any part hereof, or any provisions here contained be rendered or declared invalid by reason of any existing or subsequently enacted legislation or by any decree of a court of competent jurisdiction, such invalidation of such part or portion of this agreement shall not invalidate any remaining portions, which shall continue in full force and effect. The Union and the company shall within thirty (30) days renegotiate the affected portion of this agreement.

SECTION 32

(a) Any employee required to appear in court at the request of the Employer or at the summons of the National Labor Relations Board or the New York State Labor Relations Board, and the New Jersey State Board of Mediation as a result of some action taken on behalf of the Employer, shall be paid in full for lost time by the Employer. No payment shall be less than a full day's pay, but the employee shall be available for work if the proceedings do not extend the full day.

(b) When an employee is required to appear in court for the purpose of testifying because of an accident he may

have been involved in during working hours, such employee shall be reimbursed in full for all time lost unless the employee is proven to have been under the influence of intoxicating liquor or narcotics.

SECTION 33

Employee must make arrangements himself to continue his dues payments when he is sick, injured, on vacation, or on a leave of absence.

SECTION 34
Union Security

(a) All present employees who are members of the Union on the effective date of this agreement or on the date of execution of this agreement, whichever is the later, shall remain members of the Union in good standing as a condition of employment. All present employees who are not members of the Union, and all employees who are hired thereafter shall become and remain members of the Union in good standing as a condition of employment on and after the 31st day following the beginning of their employment, or on and after the 31st day following the effective date of this agreement or the execution date of this agreement, whichever is the later. The Employer, upon notice from the Union that an employee has failed to tender the periodic dues and/or initation fee uniformly required as a condition of acquiring and retaining membership within the time above specified, shall discharge such employee within forty-eight (48) hours after receipt of written notice from a properly authorized official of the Union. The Employer shall provide the Union with the names of all new employees. This provision shall be made and become effective as of such time as it may be made and become effective under the provisions of the National Labor Relations Act, but not retroactively.

(b) When the Employer needs additional employees, he shall give the Union equal opportunity with all other sources to provide suitable applicants, but the Employer shall not be required to hire those referred by the Union.

(c) The Employer shall promptly notify the Union when new employees are to be hired. The Union shall have the

right to send applicants for the job or jobs, and the Employer agrees to interview such applicants and give the same interview considerations to Union sent applicants as is given to applicants from other sources. This provision shall not be deemed to require the Employer to hire Union applicants or to preclude the Employer from hiring employees from other sources. The Employer reserves the right to finally pass on the qualifications and experience of all applicants for employment.

(d) No provision of this article shall apply in any State to the extent that it may be prohibited by State law. If under applicable State law, additional requirements must be met before any such provision may become effective, such additional requirements shall be first met.

(e) In the event of any change in the law during the term of this agreement, the Employer agrees that the Union will be entitled to receive the maximum Union Security which may be lawfully permissible.

(f) If any provision of this article is invalid under the law of any State wherein this agreement is executed, such provision shall be modified to comply with the requirements of State law or shall be renegotiated for the purpose of adequate replacement. If such negotiations shall not result in a mutually satisfactory agreement, the Union shall be permitted all legal and economic recourse.

SECTION 35

The President shall affix his signature to all collective bargaining agreements made and entered into on behalf of any and all members of this Local Union.

SECTION 36

It is specifically agreed that each and every benefit heretofore enjoyed by the employees covered by the collective bargaining agreement of any of the Local Unions signatory hereto which has been, may be, or may have been superior to that provided by this agreement, whether such superiority be in form of monetary value, conditions of employment, welfare benefits, pension benefits, or even more personal preference shall continue in effect for said employees with respect to their employment by Employers under contract

with this Local Union for the period of this agreement, as if the said superior benefits had been specifically extended by the provisions of this agreement.

SECTION 37

(a) When two or more companies merge their operations, then the employees of the respective companies shall all be placed on one seniority roster in the order of the earliest date of hire of each of the employees with their respective company.

(b) When one company acquires or purchases control of the business of another company, then the employees of the company so acquired or purchased shall be placed at the bottom of the acquiring or purchasing company's seniority roster in the order of their payroll or company seniority with the former company.

SECTION 38
Owner Drivers

(a) The Employer shall not hire any trucks unless all employees governed by this agreement on the Employer's seniority list are working.

(b) Owner-drivers shall not be used until all available employees on the seniority list of the Employer are working.

(c) The company shall have the right, subject to the applicable terms of this agreement, to deal with or enter into agreement with, or otherwise utilize the services of owner-drivers, provided all such owner-drivers shall be members in good standing of the Union or make immediate application for membership and become and remain members in good standing within eight (8) days after starting work under the lease agreement. For the purpose of this agreement, the term owner-driver shall mean only those individuals who are affiliated by lease with the Employer and who operate as drivers of their own vehicle and who do not employ other drivers. Nothing in this article shall apply to any equipment leased, except where the owner-driver also drives and does not employ a driver.

(d) All sections of Union Security shall refer to owner-drivers.

(e) Whenever an owner-driver is engaged, the Employer must in compensating such owner-driver, separate the payment for truck rental from the wages paid to him for personal services so that the sum of money paid to him for personal services is not less than what would be received by such owner-driver as wages in accordance with the wage rates setforth in Section 2-a of this agreement, as an employee of the Employer. The Employer's pay and time card records relating to owner-drivers shall be open for inspection of Union representatives. Owner-drivers shall be entitled to all of the other benefits provided for in this agreement.

SECTION 39
Shop Steward

(a) The Employer recognizes the right of the Union to designate job stewards and alternates from the Employer's seniority list. The authority of job stewards and alternates so designated by the Union shall be limited to and shall not exceed the following duties and activities:

1. THE INVESTIGATION AND PRESENTATION OF GRIEVANCE IN ACCORDANCE WITH THE PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT.
2. THE COLLECTION OF DUES WHEN AUTHORIZED BY APPROPRIATE LOCAL UNION OFFICIAL.
3. THE TRANSMISSION OF SUCH MESSAGES AND INFORMATION WHICH SHALL ORIGINATE WITH AND ARE AUTHORIZED BY THE LOCAL UNION OR ITS OFFICERS PROVIDED SUCH INFORMATION AND MESSAGE (a) HAVE BEEN REDUCED IN WRITING, OR (b) IF NOT REDUCED IN WRITING, ARE OF A ROUTINE NATURE AND DO NOT INVOLVE WORK STOPPAGE, SLOW DOWNS, REFUSALS TO HANDLE GOODS OR ANY INTERFERENCE WITH THE EMPLOYER'S BUSINESS.

(b) Job stewards and alternates have no authority to take strike action or any other action interrupting the Employ-

er's business, except as authorized by official action of the Union.

(b) The Employer recognizes these limitations upon the authority of job stewards and their alternates and shall not hold the Union liable for any unauthorized acts. The Employer in so recognizing such limitations, shall have the authority to impose proper discipline, including discharge, in the event the shop steward has taken unauthorized strike action, or work stoppage in violation of this agreement. The Union reserves the right to remove the shop steward at any time for the good of the Union.

(d) A shop steward shall not be considered an officer of the Union.

(e) The shop steward shall start work on the earlier starting time and stay at the terminal until all work is allocated to the men and take care of any complaints. If there are no complaints, the steward will go about his assigned duties. The steward has the option of starting work in line with his seniority or going out on assigned work if he prefers. He shall not be discriminated against in the allocation overtime.

SECTION 40

(a) All regular employees covered by this agreement shall be paid in full each week. Not more than one (1) week's pay shall be held on an employee. The Employer agrees to pay additional or extra men at the completion of the work whenever it is possible to do so, or will mail a check within twenty-four (24) hours to the employee, at the address designated by the employee.

(b) When the regular pay day occurs on a holiday, the Employer shall pay employees on a regular work day immediately preceeding the holiday.

(c) Each employee shall be provided with a statement of gross earnings on an itemized statement of all deductions made for any purpose.

SECTION 41

The Employer shall have a right to establish company rules so long as they do not conflict with the provisions of

this contract. Before any rule become effective, they shall meet with the approval of the Union.

SECTION 42

It is agreed and understood by the parties, that an Employer signing this agreement is automatically signing and agreeing to the trust indenture of Teamsters Union Local No. 408 Funds.

SECTION 43
Health and Welfare

(a) The Employer during the term of this agreement shall pay and contribute to Teamsters Union Local No. 408 Welfare Fund the sums specified below monthly for each employee in the bargaining unit represented by Teamsters Union Local No. 408 to provide health and welfare benefits for the employees...

EFFECTIVE MAY 1, 1979.....$135.00 A MONTH PER MAN
EFFECTIVE MAY 1, 1980.....$150.00 A MONTH PER MAN
EFFECTIVE MAY 1, 1981.....$165.00 A MONTH PER MAN

The Employer shall contribute the sum monthly for each employee in the bargaining unit under the terms of this Labor Contract into the Welfare Fund of Employers and Teamsters Union Local No. 408, in accordance with the instructions and rules of the Fund for administration and other expenses of the Fund and for the Fund to provide the following coverages:

1. A $10,000.00 Life Insurance.
2. A $10,000.00 Accidental Death and Dismemberment Insurance on occupational and non-occupational basis.
3. A sick and non-occupational accident insurance which shall provide that the employees in case of sickness shall receive the payment of $117.00 per week commencing on the 4th day of sickness for a maximum of 26 weeks for each sickness; and shall provide that the employees in case of a non-occupational accident shall receive the payment of $117.00 per week commencing from the first day of the non-occupational accident.

4. A $400.00 medical reimbursement plan annually for employees and their family, which shall include doctor visits to the home of the employee. The maximum payment per each treatment in a physician's office is $7.00; the maximum payment per each treatment elsewhere to be $9.00. All visits to be paid up to the maximum medical benefit of $400.00 annually for the employee and his family.
5. Comprehensive contract of Hospital Service Plan of New Jersey (BLUE CROSS PLAN) and the contract of medical surgical plan (BLUE SHIELD PLAN) or their equivalent for the employee and the employee's family.
6. An Eye Glass Plan for the employee, or employee's spouse, or unmarried children (under the age of 19) which shall provide upon receive in the Fund office an itemized paid bill from your optician or optometrist that said employee shall receive an allowance "each contract year" towards eye glasses and/or eye examination for the Employee, or employee's spouse, or unmarried children.
7. G.H.I. DENTAL PLAN: a dental plan for the employee, the employee's spouse and unmarried children (under age of 19).

The $10,000.00 Life Insurance Policy and the $10,000.00 Accidental Death and Dismemberment Insurance Policy which shall provide that the employee who leaves the employ of the Employer may pay the regular premiums and be covered by the policies. The above coverage shall be provided each employee without the employee being required to submit to a physical examination.

(b) The Employer shall contribute the monthly contribution on or before the first day of each calendar month. If the Employer fails to make his monthly contribution on or before the 20th day of each calendar month, the Fund shall assess the Employer a penalty of $1.00 for each employee, for each month for which the contribution is not made. The Fund may further assess said Employer for any and all expenses, court costs, attorney fees, telephone and correspondence cost, etc., which the Fund incurs in collecting or attempting to collect delinquent payments from said Employer.

(c) When a new employee commences employment with the Employer and is employed twenty (20) days during any part of the first calendar month, that the employee is employed, the Employer shall make the first monthly contribution for the sum of $15.00 for the month which the employee commenced employment; and the Employer's second monthly contribution shall be due and owing on the first day of the calendar month immediately following the employee's employment in the amount setforth as specified in Section 43-a. The Employer is responsible for the coverage of disability for the period of the first month. A new employee who was not previously eligible for coverage under the terms of this agreement shall be eligible commencing on the day when the second monthly contribution of his Employer is due and owing to the Welfare Fund.

(d) A new employee of the Employer who has not previously been eligible under the provision of this agreement will not be eligible for coverage under the Eye Glass Plan and Dental Plan of this agreement until four (4) months after the said new employee has commenced employment with his Employer and provided that within the four (4) month period, the Employer has not terminated said employee's employment.

(e) Failure on the part of the Employer to pay the monthly contribution specified herein into the said Welfare Fund for each and all employees shall leave the Employer with full responsibility to assume and pay the benefits the employee(s) and his (or their) family are entitled to under the terms of this labor contract.

(f) The Employer shall continue to contribute the monthly payment into the Fund for all employees covered by this labor contract even though some of the employees may not work because of lack of work, provided the employee continue to report to maintain his seniority. Employees who are permanently laid off from the employ of the Employer shall no longer be covered by the Health and Welfare Plan. However, when the employee returns to work, he shall be covered by the Health and Welfare Plan on the first day.

(g) Employees who are presently employed and covered by the Welfare Fund shall continue to be insured under the

Welfare Fund and shall be given proof of coverage in the form of policies. New employees shall be insured under the Health and Welfare Plan immediately after the second monthly contribution of his Employer is due and owing to the Welfare Fund and shall be given proof of coverage in the form of policies.

(h) Employees of the Employer who are not working due to illness or inuury shall hold seniority during said illness or injury, and the Employer shall contribute the sums specified herein monthly to the Joint Welfare Fund of Employers and Teamsters Union Local No. 408, for each of said employees for the period of one (1) year during their illness or injury.

(i) If the Employer fails to notify the Welfare Fund of the termination of a employee, the Employer shall be required to make the monthly contribution to the Fund for every month after the employee's termination, and the Employer shall be liable for said monthly contribution until the Employer notifies the Welfare Fund in writing of the termination of the employee.

(j) An employe, at the time of termination, can no longer be included in the group coverage of Teamsters Local Union 408 Welfare Fund. If an employee wishes to continue to have the same coverages after being terminated, the employee must notify the individual insurance companies and Blue Cross/Blue Shield and make a request to be billed as an individual subscriber.

(k) The Employer agrees that if the average cost of the Health and Welfare insurance coverages is increased, the Employer shall bear the increased coverage cost by remitting sufficient monies to the Fund for said cost, in addition to his monthly contribution for each employee.

(l) The Employer agrees to immediately join and concur with the Union in the execution of such petitions, applications, and forms that are required to be filed with any State or Governmental agencies.

(m) The Joint Welfare Fund of Employers and Teamsters Union Local 408 shall be administered by a Board of Trustees of the said Welfare Fund composed of four (4) Trustees

from the Employers who have a signed labor contract with the Union, and four (4) Trustees from the Union.

(n) The Trustees shall employ a person to be administrator to the Fund. The administrator shall be in charge of the Fund office and administer the affairs of the Fund under the supervision of the Trustees. The salary, duties, and term of office of the administrator shall be determined by the Trustees.

(o) Trustees are vested with full power and authority to administer the Fund which shall be utilized to purchase all insurance benefits for the employees as setforth in this section. The salary, duties, and term of office of the Trustees shall be determined by the Trustees.

(p) Trustees shall submit a written report for the fiscal year to the Employers and the Union as to the income, expenses, and financial status of the Fund.

(q) Except for the above, the Trustees shall not be liable nor accountable for the administration of the Fund.

(r) Trustees shall assess the Employer with penalties for any and all delinquent payments that are due the Fund provided herein or as the trustees, in their discretion, may otherwise determine.

(s) It is agreed between the Employer and the Union that should the Employer fail to comply with the terms of this section, the Union shall have a right to order a work stoppage and such a work stoppage shall not be a violation of this agreement. Trustees shall have the right to receive, collect, sue, demand, and institute proceedings in any court or other tribunal for the purpose of enforcing payment of any of the contributions required to be made under the agreement. The delinquent Employer shall be further obligated to pay to the Welfare Fund all court cost, reasonable attorney fees, and other expenses incurred by the Trustees in enforcing or attempting to enforce payment of any of the contributions required to be made under this agreement.

(t) No employee shall have the option to receive instead of the benefits provided for by the Welfare Fund any part of the amounts contributed by the Employer into the Fund, and no employee shall have the right to assign any benefits to which he or his dependents may be entitled to under any

of the agreements and declarations of the Fund or to receive a cash consideration in lieu of the benefits established by the Fund either upon termination of the Fund herein created or through severance of his employment or otherwise.

(u) Title to all monies paid in the said fund shall be vested in and remain exclusively in the Trustees, and it is the intention of the parties hereto that said Fund shall constitute an irrevocable trust and that no benefits or monies payable from this Fund shall be subject to in any manner to sale, alienation, transfer, assignment, pledge, encumbrance or change and any attempt to do so shall be void. The monies paid into said Fund shall not constitute or be deemed wages to the individual employee nor shall said monies in the manner be liable for or subject to debts, contract, torts, and liabilities of any of the employees or parties entitled to such money, that is, any of the benefits provided for under the terms of this agreement.

(v) The Employer shall contribute the monthly payment into the Fund for all employees who have been suspended or discharged from the employ of the Employer where cases where the suspended or discharged employe is waiting for an arbitration hearing and/or decision thereof, and contribute the monthly payment until such time as the decision of the hearing is received by the Union and the Employer.

(w) When Blue Cross/Blue Shield has an increase in coverage during the term of this agreement, the Employers and Teamsters Union Local 408 hereby agree to said increase in contributions and shall apply same to this agreement.

(x) The Employer agrees to make contributions to the Welfare Fund pending the negotiation of a new agreement.

SECTION 44
Vacations

ALL EMPLOYEES ON THE PAYROLL ON MAY 1st OF EACH YEAR SHALL RECEIVE A VACATION WITH PAY IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:**

(a) All employes who have beem employed less than eight (8) months shall receive one (1) day of vacation with pay in advance for each (2) months of service.

(b) All employees who have been employed for a period of eight (8) months shall receive one (1) week's vacation with pay in advance, forty (40) straight time hours regardless of the number of days worked during the anniversary year.

(c) All employees who have been employed for a period of one (1) year shall receive two (2) week's vacation with pay in advance, eighty (80) straight time hours regardless of the number of days worked during the eight (8) month anniversary period.

(d) All employees who have been employed for a period of five (5) years or over shall receive three (3) week's vacation with pay in advance, one hundred and twenty (120) straight time hours regardless of the number of days worked during the anniversary year.

(e) 1. All employees who have been employed eleven (11) years or over and who have worked 125 days of the contract year shall receive four (4) week's vacation with pay in advance, one hundred and sixty (160) straight time hours, in the first contract year and in the second contract year it shall be ten (10) years or over.

2. All employees who on May 1st of each year have thirteen (13) or more years of continuous service shall receive one (1) day's pay (eight (8) hours), without time off, for each year of service over thirteen (13) years to a maximum of five (5) days at his regular hourly base rate.

(f) All time that employees have been deprived of working because of injury suffered while working for the Employer shall be credited to the employee as time worked and shall be included in the time required for vacations.

(g) If during any week any employee is unable to work a full week because of Federal or State regulations, he shall be credited with a full week's work.

(h) Vacations for all eligible employees shall be based on the average number of hours worked per week during the contract year (maximum of forty-eight (48) hours) accord-

ing to their classification on the basis of straight time wages prevailing each contract year.

(i) All days employees have received pay for (excluding overtime) including vacation days that employees were paid for after qualifying for a shorter period of vacation in the same contract year shall be credited to the days required for vacations.

(j) All weeks in the period beginning May 1st, and ending October 31st, of each year, shall constitute the vacation period, unless mutually agreed upon between the Employer and the employees. Employees may take their vacation either before or after the vacation period, providing the Employer agrees.

(k) The Employer shall assign an equal number of employees from each job classification for vacations. However, the employees in seniority order, according to job classification, shall have preference of selecting the week(s) they desire for their vacation.

(l) All time that suspended or discharged employees have not worked by reason of waiting for arbitration and decision thereof shall be credited to the time required for vacation, regardless of the outcome of the arbitration.

(m) Vacation schedule (which employees and the week(s) they are to go on vacation) shall be decided between the Employer and the employees and posted before May 1st of each contract year.

(n) Employees leaving or discharged from the employ of the Employer shall receive such proportionate share of vacation pay as have accrued to the date of termination.

(o) If an employee is out sick, his vacation pay shall be paid to him as soon as time is possible.

(p) In case of death of an employee who is eligible for vacation, the vacation wages shall be paid to the employee's estate.

(q) Vacation pay shall include the night shift differential for employees who work the night shift on a majority of the qualifying working days.

(r) Vacations are compulsory for all employees under the bargaining unit.

(s) The pay of all employees shall be computed on the basis of the wage classification in which the employee was paid for the majority of the days during the qualifying period.

(t) Vacations must be taken in the contract year and will not accumulate from year to year.

(u) The vacation period of each qualified employee shall be as follows: all employees receiving one (1) week's vacation shall take said vocation during the summer months. All employees receiving two (2) week's vacation shall take one week in the summer and one week in the winter. All employees receiving three (3) week's vacation shall take two (2) week's in the summer and one (1) week in the winter. All employees receiving four (4) week's vacation shall take two (2) weeks in the summer and two (2) weeks in the winter. "SUMMER PERIOD" is from May 1st, to October 31st.; and the "WINTER PERIOD" is from November 1st, to April 30th.

**EMPLOYEE'S ANNIVERSARY DATE SHALL BE THE BASIS FOR ESTABLISHING THE VACATION EARNED WITHIN EACH CONTRACT YEAR.

SECTION 45

This contract shall be retroactive as of May 1, 1979.

SECTION 46
Pension Plan

(a) For the objects and purposes setforth in a certain agreement and declaration of trust executed between the certain Employers and the Union and any amendments or supplements thereto, the Employer agrees to contribute to the Pension Fund of Teamsters Union Local No. 408 the sums as specified below, per hour for each straight time hour worked from Monday to Saturday, by each employee and for each employee covered by this agreement...

EFFECTIVE MAY 1, 1979...FIFTY CENTS (50¢) PER HOUR PER MAN

EFFECTIVE MAY 1, 1980...SIXTY CENTS (60¢) PER HOUR PER MAN

EFFECTIVE MAY 1, 1981...SEVENTY CENTS (70¢) PER HOUR PER MAN

(b) The second monthly contribution to the Fund and all accumalations thereon shall be used to provide for Pension or Retirement Benefits as provided in a plan to be selected by the Trustees of the Fund and to be used for such other purposes setforth in this agreement and declaration of trust governing the Trustees in the administration of the Pension Fund.

(c) Trustees in setting up a Pension Plan or Retirement Benefits shall be the sole judges in determining the eligibility requirements and the rights of any employees thereunder.

(d) The Employer agrees to immediately join and concur with the Union and the Trustees, if necessary, in executing such petitions, applications and forms that are required to be filed with any State or Governmental Agencies and agrees to provide such information as the Trustees, banking institutions, and insurance companies may request in connection with the operation of the Pension Fund and Plan.

(e) Trustees of the Pension Fund or Plan shall have such rights and duties as setforth in the Plan and in the agreement and declaration of trust and any supplements or amendments thereto.

(f) It is agreed between the Employer and the Union that should the Employer fail to contribute the sum per straight time hour for each straght time hour worked for each employee as required by this section, the Union shall have the right to order a work stoppage of the employees of the Employer and that such a work stoppage shall not be a breach of this labor contract.

(g) Whenever Teamsters Union Local 408 Pension Plan merges or combines with any other pension fund or plan, such merger or combination shall be binding upon the parties hereto. The Employer agrees to make pension contributions to the party or parties designated by the Union or Fund to receive said contributions. Failure to comply with this requirement shall constitute cause for the Union to

strike or picket the company, any other provision in the agreement notwithstanding.

(h) All vacation and holiday pay to be included in all pension contributions.

(i) It is agreed and understood by the parties, that an Employer signing this agreement is automatically signing and agreeing to the trust indentures of Teamsters Union Local No. 408 Funds.

SECTION 47
Death In Family

In case of a death in an employee's family, i.e., SPOUSE, MOTHER, FATHER, SISTER, BROTHER, CHILDREN, MOTHER IN LAW, FATHER IN LAW, the Employer shall grant such employee the maximum of three (3) days off with pay for the express purpose of attending services for the deceased. Death certificate or other satisfactory proof of death must be submitted to the Employer. The employee must be on the seniority list for at least three (3) months.

SECTION 48
Probationary Period For All New Employees

All newly hired employees shall be considered as temporary employees on probation for a period of thirty (30) days from the date upon which they started. During this period, they may be discharged by the Employer for any reason.

SECTION 49
Uniforms

The Employer agrees that if an employee is required to wear any kind of uniform as a condition of his continued employment, such uniform shall be furnished by and maintained by the Employer, free of charge, at the standard required by the Employer.

SECTION 50

Any employee who has private business to take care of shall tell the Employer the night before or within two (2) hours the following morning; and the provision does not apply to truck drivers. Drivers must complete their runs.

SECTION 51

When drivers or outside service men require help, the same shall be looked into and such driver or outside service men shall be given the required help. The company is to use their discretion.

SECTION 52

The Employer recognizes the jurisdiction of the Union over the drivers of all vehicles equipment used in the delivery or distribution of materials, machinery, etc., to and from all customer's sites and in and around said sites and agrees that such work shall be performed by members of the Union.

SECTION 53

Compulsory overtime for all employees working in the warehouse: when the work load requires overtime, the employees in that job classification are requested to work, must work at least two (2) hours overtime on a normal work day, Monday to Friday, inclusive. Notification of the need to work overtime will be given to the employee eight (8) hours before their normal quitting time.

SECTION 54
Sick Days

Employees who, on May 1, 1979, have one (1) year seniority shall be granted seven (7) days sick leave absence during the contract year, commencing May 1, 1979. Employees who have less than one (1) year's seniority shall receive one (1) day sick leave absence for each two (2) months of service. For each day of sick leave that an employee does not use, he will be paid for those days of the contract year. No sick pay day allowance will be granted during the first three (3) months of employment.

SECTION 55
Personal Day

Employees who, on May 1, 1979, have one (1) year seniority, shall be granted three (3) personal days (with pay) during the contract year commencing May 1, 1979. Employees who have less than one (1) year's seniority shall receive

one (1) personal day for each four (4) months of service. For each personal day that an employee does not use, he will be paid for those days of the contract year. No personal day allowance will be granted during the first three (3) months of employment.

SECTION 56
Jury Duty

If an employee is required to serve as a juror, he must immediately upon receipt of jury notice, advise the company. The Employer will pay the employee during the period of usual service, up to a maximum of ten (10) days, the differences between his regular earnings on the basis of an eight (8) hour day (at the employee's basic hourly rate) and what he receives as a juror. The employee must be on the seniority list for at least three (3) months.

SECTION 57
Cost-Of-Living

Effective November 1, 1979, and semi-annually thereafter, a cost of living adjustment will be paid based on the formula of one cent (1¢) per hour for each .3 point increase in the Consumers Price Index for Urban Wage Earners and Clerical Workers (revised series) (1967=100) with a cap of fifteen cents (15¢).

SECTION 58

It is hereby agreed between the Employer and the Union that all terms and conditions of this labor contract shall be effective as of MAY 1, 1979, and shall and shall continue in full force and effect until midnight, APRIL 30, 1982. In witness whereof, the parties hereto set their hands this date: July 11, 1979.

FOR THE EMPLOYER Bildisco

Arthur Gordon

TEAMSTERS UNION LOCAL 408

/s/ _____

ANTHONY CUSANO,
Vice-Pres. & Bus. Mgr.

_____

WITNESS

SUPREME COURT OF THE UNITED STATES

No. 82-818

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

BILDISCO AND BILDISCO, DEBTOR-IN-POSSESSION, ET. AL.

ORDER ALLOWING CERTIORARI. Filed January 17, 1983.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. The case is consolidated with case No. 82-852, *Local 408, International Brotherhood of Teamsters, etc.* v. *National Labor Relations Board, et al.*, and a total of one hour is allotted for oral argument.

SUPREME COURT OF THE UNITED STATES

No. 81-852

LOCAL 408, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, ETC., PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

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